

**UNITED STATES DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
YELLOWSTONE NATIONAL PARK**

**CONCESSION CONTRACT  
NO. CC-YELL-004-06**

**BETWEEN**

**THE NATIONAL PARK SERVICE  
AND**

**YELLOWSTONE PARK SERVICE STATIONS, INC.**

**FOR**

**PROVIDING AUTOMOBILE SERVICE STATIONS  
IN  
YELLOWSTONE NATIONAL PARK**

**Covering the Period**

**January 1, 2006 through October 31, 2007**

## **TABLE OF CONTENTS**

### **IDENTIFICATION OF THE PARTIES**

- SEC. 1            TERM OF CONTRACT**
- SEC. 2            DEFINITIONS**
- SEC. 3.           SERVICES AND OPERATIONS**

- A.    Required and Authorized Visitor Services
- B.    Operation and Quality of Operation
- C.    Operating Plan
- D.    Merchandise and Services
- E.    Rates
- F.    Impartiality as to Rates and Services

### **SEC. 4.           CONCESSIONER PERSONNEL**

- A.    Employees
- B.    Employee Housing and Recreation

### **SEC. 5.           LEGAL, REGULATORY, AND POLICY COMPLIANCE**

- A.    Legal, Regulatory, and Policy Compliance
- B.    Notice
- C.    How and Where to Send Notice

### **SEC. 6.           ENVIRONMENTAL AND CULTURAL PROTECTION**

- A.    Environmental Management Objectives
- B.    Environmental Management Program
- C.    Environmental Management Measurement
- D.    Environmental Data, Reports, Notifications, and Approvals
- E.    Corrective Action
- F.    Indemnification and Cost Recovery for Concessioner Environmental Activities
- G.    Weed and Pest Management
- H.    Protection of Cultural and Archeological Resources

### **SEC. 7            INTERPRETATION OF AREA RESOURCES**

- A.    Concessioner Obligations
- B.    Director Review of Content

**SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY CONCESSIONER**

- A. Assignment of Concession Facilities
- B. Concession Facilities Withdrawals
- C. Effect of Withdrawal
- D. Right of Entry
- E. Personal Property
- F. Condition of Concession Facilities
- G. Utilities Provided by the Director
- H. Utilities Not Provided by the Director

**SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS**

- A. Construction of Real Property Improvements
- B. Removal of Real Property Improvements
- C. Leasehold Surrender Interest
- D. Concession Facilities Improvement Program

**SEC. 10. MAINTENANCE**

- A. Maintenance Obligation
- B. Maintenance Plan
- C. Repair and Maintenance Reserve

**SEC. 11. FEES**

- A. Franchise Fee
- B. Payments Due
- C. Interest
- D. Adjustment of Franchise Fee

**SEC. 12. INDEMNIFICATION AND INSURANCE**

- A. Indemnification
- B. Insurance in General
- C. Commercial Public Liability
- D. Property Insurance

**SEC. 13. BONDS AND LIENS**

- A. Bonds
- B. Lien

**SEC. 14. ACCOUNTING RECORDS AND REPORTS**

- A. Accounting System
- B. Annual Financial Report
- C. Other Financial Reports

**SEC. 15. OTHER REPORTING REQUIREMENTS**

- A. Insurance Certification
- B. Environmental Reporting
- C. Miscellaneous Reports and Data.

**SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION**

- A. Suspension
- B. Termination
- C. Notice of Bankruptcy or Insolvency
- D. Requirements in the Event of Termination or Expiration

**SEC. 17. COMPENSATION**

- A. Just Compensation
- B. Compensation for Contract Expiration or Termination
- C. Procedures for Establishing the Value of a Leasehold Surrender Interest
- D. Compensation for Personal Property

**SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**  
**SEC. 19. GENERAL PROVISIONS**

**EXHIBITS**

- EXHIBIT A:** Leasehold Surrender Interest
- EXHIBIT B:** Operating Plan
- EXHIBIT C:** Nondiscrimination
- EXHIBIT D:** Assigned Land, Real Property Improvements
- EXHIBIT E:** Assigned Government Personal Property
- EXHIBIT F:** Concessioner Construction, Major Rehabilitation, and Repair and Maintenance Project Procedures
- EXHIBIT G:** Leasehold Surrender Interest
- EXHIBIT H:** Maintenance Plan
- EXHIBIT I:** Insurance Requirements

**[CORPORATION]**

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, (hereinafter referred to as the "Director"), and **Yellowstone Park Service Stations, Inc.**, a corporation organized and existing under the laws of the State of **Montana**, hereinafter referred to as the "Concessioner"):

**[PARTNERSHIP]**

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, hereinafter referred to as the "Director", and \_\_\_\_\_, a partnership organized under the laws of the State of \_\_\_\_\_, hereinafter referred to as the "Concessioner":

**[SOLE PROPRIETORSHIP]**

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, hereinafter referred to as the "Director", and \_\_\_\_\_, an individual of, doing business as \_\_\_\_\_, hereinafter referred to as the "Concessioner":

**WITNESSETH:**

THAT WHEREAS, Yellowstone National Park is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

WHEREAS, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

WHEREAS, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

WHEREAS, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2-4), and November 13, 1998 (Public Law 105-391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

## **SEC. 1. TERM OF CONTRACT**

This Concession Contract No. CCYELL004-03 ("CONTRACT") shall be effective as of **January 1, 2006**, until its expiration on **October 31, 2007**.

## **DEFINITIONS**

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

- (a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, Federal, State and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.
- (b) "Area" means the property within the boundaries of Yellowstone National Park.
- (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.
- (d) "Capital Improvement" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (e) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to or constructed by the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.
- (f) "Days" shall mean calendar days.
- (g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.
- (h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.

(i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

- (1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);
- (2) Charges for employees' meals, lodgings, and transportation;
- (3) Cash discounts on purchases;
- (4) Cash discounts on sales;
- (5) Returned sales and allowances;
- (6) Interest on money loaned or in bank accounts;
- (7) Income from investments;
- (8) Income from subsidiary companies outside of the Area;
- (9) Sale of property other than that purchased in the regular course of business for the purpose of resale;
- (10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies; and
- (11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

- (k) "Leasehold Surrender Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (l) "Leasehold Surrender Interest Value" or the "Value" of a Leasehold Surrender Interest shall have the meaning set forth in Exhibit A to this CONTRACT.
- (m) "Major Rehabilitation" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (n) "Possessory Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (o) "Real Property Improvements" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (p) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.
- (q) "Superintendent" means the manager of the Area.
- (r) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide in Section 3(a) of this CONTRACT.

### **SEC. 3. SERVICES AND OPERATIONS**

#### **(a) Required and Authorized Visitor Services**

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

- (1) Required Visitor Services. The Concessioner is **required** to provide the following visitor services during the term of this CONTRACT:
  - A. Automobile Service Stations at Mammoth, Tower, Canyon, Fishing Bridge, Grant Village and Old Faithful. Each station will provide fuel for park visitors and administrative use as approved.**
  - B. Snowmobile fuel at Mammoth, Canyon, Old Faithful and Fishing Bridge, or as approved.**
  - C. Propane at Canyon, Fishing Bridge and Grant Village, or as approved.**
  - D. Towing services throughout the park as approved.**
  - E. Repair services throughout the park as approved.**
- (2) Authorized Visitor Services. The Concessioner is **authorized** to provide the following visitor services during the term of the CONTRACT:
  - F. Convenience and vended items such as film, ice, snacks, coffee and soft drinks at existing stations throughout the park as approved.**



**G. Retail items for vehicles customarily found in service stations, such as windshield wipers, motor oil, antifreeze, etc.**

**(b) Operation and Quality of Operation**

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

**(c) Operating Plan**

The Director, acting through the Superintendent shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a Risk Management Program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit B. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

**(d) Merchandise and Services**

- (1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.
- (2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this CONTRACT must be approved, in writing, by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.
- (3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

**(e) Rates**

All rates and charges to the public, by the Concessioner for visitor services, shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this

CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

**(f) Impartiality as to Rates and Services**

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit C.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees, conducting official business, reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner, except to the extent that they are equally available to the general public.

**SEC. 4. CONCESSIONER PERSONNEL**

**(a) Employees**

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

- (5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.
- (6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area, and enjoyment and protection of visitors, and shall take such actions as are necessary to correct the situation.
- (7) The Concessioner shall maintain, to the greatest extent possible, a drug-free environment, both in the workplace and in any Concessioner employee housing, within the Area.
- (8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.
- (9) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

**(b) Employee Housing and Recreation**

- (1) If the Concessioner is required to provide employee housing under this CONTRACT, the Concessioner's charges to its employees for this housing must be reasonable (see details in Exhibit B, Operating Plan).
- (2) If the visitor services required and/or authorized under this CONTRACT are located in a remote or isolated area, the Concessioner shall provide appropriate employee recreational activities.

**SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

**(a) Legal, Regulatory and Policy Compliance**

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT (Exhibit C, Nondiscrimination).

**(b) Notice**

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors and, at its sole cost and expense, must promptly rectify any such violation.

**(c) How and Where to Send Notice**

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent  
National Park Service  
P.O. Box 168  
Yellowstone National Park, Wyoming 82190  
Attention: Chief, Business Management Division

Notices sent to the Concessioner shall be sent to the following address:

Yellowstone Park Service Stations, Inc.  
P. O. Box 11, 107 Park Road  
Gardiner, Montana 59030-0011  
Attention: Mr. Hal Broadhead

**SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION**

**(a) Environmental Management Objectives**

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

(1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

**(b) Environmental Management Program**

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the

Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.

(3) The EMP shall include, without limitation, the following elements:

(i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.

(iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an Environmental Program Manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

(vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-

assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

**(c) Environmental Performance Measurement**

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least an annual basis.

**(d) Environmental Data, Reports, Notifications, and Approvals**

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of Federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this CONTRACT. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) Reports. The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) Notification of Releases. The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) Notice of Violation. The Concessioner shall give the Director, in writing, immediate notice of any written, threatened, or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) Communication with Regulatory Agencies. The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such

communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

**(e) Corrective Action**

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this Section, or any threatened or actual violation, as set forth in this Section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

**(f) Indemnification and Cost Recovery for Concessioner Environmental Activities**

(1) The Concessioner shall indemnify the United States in accordance with Section 12 of this CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys' fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this Section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this Section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this Section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

**(g) Weed and Pest Management**

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

**(h) Protection of Cultural and Archeological Resources**

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

## **SEC. 7. INTERPRETATION OF AREA RESOURCES**

### **(a) Concessioner Obligations**

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation, at the request of the Director, to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

### **(b) Director Review of Content**

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

## **SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER**

### **(a) Assignment of Concession Facilities**

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this CONTRACT:

(i) certain parcels of Area land as described in Exhibit D upon which, among other matters, the Concessioner may be authorized to construct real property; and

(ii) certain real property improvements described in Exhibit D in existence as of the effective date of this CONTRACT, as may be modified from time to time to, including additional real property improvements completed in accordance with the terms and conditions of this CONTRACT.



(2) The Director shall, from time to time, amend Exhibit D to reflect changes in Concession Facilities assigned to the Concessioner, including, without limitation, amending Exhibit D to reflect the addition of real property improvements completed in accordance with the terms and conditions of this CONTRACT and to reflect the withdrawal of Concession Facilities as set forth below.

**(b) Concession Facilities Withdrawals**

The Director may withdraw all, or portions of, these Concession Facilities assignments at any time during the term of this CONTRACT if:

- (1) the withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;
- (2) the operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or
- (3) land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

**(c) Effect of Withdrawal**

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated as a termination of this CONTRACT pursuant to Section 16. The Concessioner will be compensated, pursuant to Section 17, for the value of any Leasehold Surrender Interest it may have, if any, in permanently withdrawn Concession Facilities. No other compensation is due the Concessioner in these circumstances.

**(d) Right of Entry**

The Director shall have the right, at any time, to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

**(e) Personal Property**

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this CONTRACT, unless such personal property is provided by the Director as set forth in Subsection (e)(2).

(2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation, removable equipment, furniture and goods, for the

Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit E to the Concessioner as of the effective date of this CONTRACT. This Exhibit E will be modified from time to time, by the Director, as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

**(f) Condition of Concession Facilities**

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

**(g) Utilities Provided by the Director.**

The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

**(h) Utilities not provided by the Director**

If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area, or shall install the utilities within the Area with the written permission of the Director, subject to the following conditions:

- (1) Any water rights deemed necessary by the Concessioner for use of water on Area or other federal lands must be acquired at the Concessioner's expense in accordance with applicable State procedures and law. Upon expiration or termination of this CONTRACT for any reason, the Concessioner must assign these water rights to the United States without compensation, and these water rights will become the property of the United States;
- (2) If requested by the Director, the Concessioner must provide to the Director any utility service provided by the Concessioner under this Section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director in writing, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and
- (3) All appliances and machinery to be used in connection with the privileges granted in this subsection, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Director.

## **SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS**

### **(a) Construction of Real Property Improvements**

The Concessioner may construct or install upon lands assigned to the Concessioner under this CONTRACT only those real property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this CONTRACT. Construction or installation of real property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit F. All real property improvements constructed or installed by the Concessioner will immediately become the property of the United States and be considered Concession Facilities.

### **(b) Removal of Real Property Improvements**

- (1) The Concessioner may not remove, dismantle, or demolish real property improvements in the Area without the prior approval of the Director.
- (2) Any salvage resulting from the authorized removal, severance or demolition of a real property improvement within the Area shall be the property of the United States.
- (3) In the event that an assigned real property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

### **(c) Leasehold Surrender Interest**

(1) This CONTRACT hereby provides the Concessioner, subject to all applicable definitions, requirements and limitations of this CONTRACT and Exhibit A, a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this CONTRACT, including, but not limited to, those Capital Improvements constructed as part of the Concession Facilities Improvement Program and those Capital Improvements which result from the Major Rehabilitation of an existing real property improvement. Upon completion of a Major Rehabilitation by the Concessioner, any existing real property improvement assigned to the Concessioner, in which the Concessioner had no Leasehold Surrender Interest prior to the Major Rehabilitation, shall be considered as a Capital Improvement for all purposes of this CONTRACT.

(2) This CONTRACT may provide the Concessioner a Leasehold Surrender Interest in real property improvements resulting from possessory interest obtained under the terms of a possessory interest concession contract. Exhibit G describes the real property improvements, if any, in which the Concessioner

has such a Leasehold Surrender Interest and states the value of this Leasehold Surrender Interest as of the effective date of this CONTRACT.

(3) The Concessioner shall not obtain Leasehold Surrender Interest under this CONTRACT except as may be provided in Exhibit A and Exhibit F. Among other matters, no Leasehold Surrender Interest shall be obtained as a result of expenditures from the Repair and Maintenance Reserve described in this CONTRACT, and this CONTRACT does not provide a Leasehold Surrender Interest as a result of expenditures for repair and maintenance of Concession Facilities of any nature.

**(d) Concession Facilities Improvement Program**

(1) The Concessioner shall undertake and complete an improvement program (hereinafter "Concession Facilities Improvement Program") costing not less than \$ NONE as adjusted for each project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Labor's CPI-U Index, as published by the Department of Labor.

(2) The Concession Facilities Improvement Program shall include: **NONE**

(3) The Concessioner shall commence construction under the Concession Facilities Improvement Program on or before N/A in a manner that demonstrates to the satisfaction of the Director that the Concessioner is in good faith carrying the Concession Facilities Improvement Program forward reasonably under the circumstances. No construction may begin until the Concessioner receives written approval from the Director of plans and specifications in accordance with Exhibit F. During the period of construction, the Concessioner shall provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Concession Facilities Improvement Program duly is being carried forward.

(4) The Concessioner shall complete and have the real property improvements available for public use on or before N/A. The Director may extend this date in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

**SEC. 10. MAINTENANCE**

**(a) Maintenance Obligation**

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

**(b) Maintenance Plan**

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit H. The Director, in his discretion, may make reasonable modifications to the Maintenance Plan

from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this CONTRACT and shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

**(c) Repair and Maintenance Reserve**

(1) The Concessioner shall establish and manage a Repair and Maintenance Reserve. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibits F and H, repair and maintenance of Concession Facilities that are nonrecurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Projects will be carried out by the Concessioner as the required by the Director, in writing in advance of any expenditure being made, and in accordance with project proposals approved by the Director. No projects may be commenced until the Concessioner receives written approval from the Director.

(2) Projects paid for with funds from the Repair and Maintenance Reserve will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this Section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Concession Facilities or housekeeping and groundskeeping responsibilities as required by this CONTRACT from Concessioner funds exclusive of the funds contained in the Repair and Maintenance Reserve.

(3) The Concessioner shall establish within its accounting system a Repair and Maintenance Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to:

**ONE AND ONE HALF PERCENT (1.5%) of the Concessioner's gross receipts for the previous month**

If the Concessioner fails to make timely debits to the Repair and Maintenance Reserve, the Director may terminate this CONTRACT for default, or may require the Concessioner to post a bond in an amount equal to the estimated annual Repair and Maintenance Reserve allocation, based on the preceding year's gross receipts.

(4) The balance in the Repair and Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Repair and Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Director. Failure to expend Repair and Maintenance Reserve Funds, when directed by the Director, shall be considered as a material breach of this CONTRACT for which the Director may seek monetary damages and other legal relief, including, without limitation, termination of this CONTRACT.

(5) Repair and Maintenance Reserve funds shall not be used for a major rehabilitation as defined in this CONTRACT. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds.

(6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this CONTRACT shall be retained by the Concessioner (subject to otherwise applicable terms and conditions of this CONTRACT).

## **SEC. 11. FEES**

### **(a) Franchise Fee**

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to **ZERO** percent (  0   %) of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the franchise fee under any circumstances.

### **(b) Payments Due**

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset against any amounts due and owing the Government, and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

### **(c) Interest**

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

### **(d) Adjustment of Franchise Fee.**

- (1) The Concessioner, or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fee established in this Section. For the purposes of this Section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this Section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.
- (2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.
- (3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.
- (4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.
- (5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this Section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.
- (6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.
- (7) The arbitration panel shall consider the written submissions, and any oral presentations made by the Concessioner and the Director, and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.
- (8) Any adjustment to the franchise fee resulting from this Section shall be prospective only.

(9) Any adjustment to the franchise fee will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

## **SEC. 12. INDEMNIFICATION AND INSURANCE**

### **(a) Indemnification**

The Concessioner agrees to assume liability for, and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

### **(b) Insurance in General**

(1) The Concessioner shall obtain and maintain, during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit I. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall, at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this Section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

### **(c) Commercial Public Liability**

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this CONTRACT.



(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit I. Furthermore, the commercial general liability package shall provide no less than the coverage and limits described in Exhibit I.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may, in his discretion, modify Exhibit I to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

**(d) Property Insurance**

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit I in amounts no less than the Director may require during the term of the CONTRACT. The minimum values currently in effect are set forth in Exhibit I.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this CONTRACT as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverages and amounts described in Exhibit I.

### **SEC. 13. BONDS AND LIENS**

#### **(a) Bonds**

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

#### **(b) Lien**

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area and any Leasehold Surrender Interest of the Concessioner.

### **SEC. 14. ACCOUNTING RECORDS AND REPORTS**

#### **(a) Accounting System**

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

**(b) Annual Financial Report**

- (1) The Concessioner shall submit annually, as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year, a financial statement for the preceding fiscal year, or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").
- (2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent certified public accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.
- (3) If annual gross receipts are between \$250,000, and \$1,000,000, the financial statements shall be reviewed by an independent certified public accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.
- (4) If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement by an independent certified public accountant, unless otherwise directed by the Director.

**(c) Other Financial Reports**

- (1) Balance Sheet. Within ninety (90) days of the execution of this CONTRACT, or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent certified public accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, constructed or installed.
- (2) Statements of Reserve Activity. The Concessioner shall submit annually, not later than one hundred twenty (120) days after the end of the Concessioner's accounting year, a statement reflecting total activity in the Maintenance Reserve for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project by project basis.

## **SEC. 15. OTHER REPORTING REQUIREMENTS**

The following describes certain other reports required under this CONTRACT:

### **(a) Insurance Certification**

As specified in Section 12, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

### **(b) Environmental Reporting**

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

### **(c) Miscellaneous Reports and Data**

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

## **SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION**

### **(a) Suspension**

The Director may temporarily suspend operations under this CONTRACT, in whole or in part, in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

### **(b) Termination**

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program, the requirement to duly expend funds from the repair and maintenance reserve and the requirement to comply with Applicable Laws.

(3) In the event of a breach of this CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate this CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate this CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

**(c) Notice of Bankruptcy or Insolvency**

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

**(d) Requirements in the Event of Termination or Expiration**

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, the total compensation due the Concessioner for such termination or expiration shall be as described in Section 17 of this CONTRACT. No other compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this Section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal).

(3) To avoid interruption of services to the public upon termination of this CONTRACT for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this CONTRACT for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

## **SEC. 17. COMPENSATION**

### **(a) Just Compensation**

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

### **(b) Compensation for CONTRACT expiration or termination**

If, for any reason, including CONTRACT expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this CONTRACT, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this CONTRACT and the Director shall, subject to the terms and conditions of this CONTRACT, assure that the Concessioner is paid the Leasehold Surrender Interest Value.

### **(c) Procedures for Establishing the Value of a Leasehold Surrender Interest**

At any time during the term of this CONTRACT, the Concessioner shall, when requested by the Director, enter into negotiations with the Director as to the value of the Concessioner's Leasehold Surrender Interest under this CONTRACT. In the event that such negotiations fail to determine an agreed upon value within a

reasonable period of time as determined by the Director, the Director or the Concessioner may initiate arbitration proceedings to determine such value upon written request to the other party. Such arbitration proceedings shall be conducted in accordance with the arbitration procedures set forth in Exhibit A. In these circumstances, the Concessioner and the Director shall each select an arbiter. The two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel in accordance with Exhibit A. The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and shall determine the value of the Leasehold Surrender Interest consistent with the terms of this CONTRACT, including without limitation Exhibit A. The arbitration panel shall also provide a means to calculate the change in the value of such Leasehold Surrender Interest as may occur for up to two (2) years from the date of the initial determination. The determination of the arbitration panel shall be binding on the Director and the Concessioner.

**(d) Compensation for Personal Property**

No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

**SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature, including, but not limited to, Leasehold Surrender Interest or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this CONTRACT.

**SEC. 19. GENERAL PROVISIONS**

- (a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.
- (b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.
- (c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this CONTRACT are not permitted.
- (d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.
- (e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.
- (f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.
- (g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.
- (h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.
- (i) This CONTRACT does not grant rights or benefits of any nature to any third party.
- (j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.
- (k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.
- (l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against



Concession Contract  
CC-YELL-004-06

the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this CONTRACT on the dates shown below.

CONCESSIONER

UNITED STATES OF AMERICA

BY William W. McSpadden  
William W. McSpadden, President  
Yellowstone Park Service Stations, Inc.

BY [Signature]  
Director, Intermountain Region  
National Park Service

DATE: 3/27/06

DATE: 3/21/06

CORPORATIONS

ATTEST:

BY: [Signature]

SHARON L. McSPADDEN  
Print name of signor

TITLE: VICE-PRES. YPSS, INC.

DATE: 3/27/06

**EXHIBIT A  
LEASEHOLD SURRENDER INTEREST  
DEFINITIONS AND REQUIREMENTS**

Exhibit A to this CONTRACT establishes certain terms and conditions of the CONTRACT regarding the nature, scope and applicable conditions of Leasehold Surrender Interest. In event of any inconsistency between Exhibit A and Exhibit F of this CONTRACT, Exhibit A shall prevail.

**Section 1. Definitions.**

“Arbitration” means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of Exhibit A will utilize the following procedures unless otherwise agreed by the Concessioner and the Director. One member of the arbitration panel will be selected by the Concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the Concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Determinations must be made by a majority of the members of the panel and will be binding on the Concessioner and the Director.

A “Capital Improvement” is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this CONTRACT and located on lands of the United States within the Area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in Exhibit A.

“Construction Cost” of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the Concessioner in accordance with Generally Accepted Accounting Principals (GAAP).

“Consumer Price Index” means the national “Consumer Price Index--All Urban Consumers” published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

“Depreciation” means the loss of value in a capital improvement, as evidenced by the condition and prospective serviceability of the capital improvement, in comparison with a new unit of like kind.

“Eligible Direct Costs” means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the

construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and

temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead (including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

"Eligible Indirect Costs" means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project did) of the Concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the Concessioner are not eligible indirect costs.

"Fixtures and Non-Removable Equipment" are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) that may be constructed by the Concessioner pursuant to the terms of this CONTRACT are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in Exhibit A, the term "fixture" includes the term "non-removable equipment."

"Leasehold Surrender Interest" solely means a right to payment in accordance with this CONTRACT for related capital improvements that the Concessioner makes or provides within the Area on lands owned by the United States pursuant to the terms and conditions of this CONTRACT. The existence of a Leasehold Surrender Interest does not give the Concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a Leasehold Surrender Interest does not include any interest in the land on which the related capital improvements are located.

"Leasehold Surrender Interest Value" means the amount of compensation the Concessioner is entitled to be paid for a Leasehold Surrender Interest in capital improvements in

accordance with this CONTRACT. The Leasehold Surrender Interest Value in existing capital improvements under the terms of this CONTRACT is an amount equal to:

- (1) The initial construction cost of the related capital improvement;
- (2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the Leasehold Surrender Interest Value;
- (3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of this CONTRACT, or, if applicable, the date on which the Concessioner ceases to utilize a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of this CONTRACT).

“Major Rehabilitation” means a planned, comprehensive rehabilitation of an existing structure that:

- (1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and
- (2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

“Pre-Rehabilitation Value” of an existing structure means the replacement cost of the structure less depreciation.

“Real Property Improvements” means real property other than land, including, but not limited to, capital improvements.

“Related Capital Improvement” or “Related Fixture” means a capital improvement in which the Concessioner has a Leasehold Surrender Interest.

“Replacement Cost” means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

“Structure” means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

“Substantial Completion of a Capital Improvement” means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

## **Section 2. Obtaining a Leasehold Surrender Interest.**

The Concessioner will obtain Leasehold Surrender Interest in capital improvements constructed in accordance with the terms and conditions of this CONTRACT, including, without limitation, the terms and conditions of this Exhibit A to the CONTRACT.

## **Section 3. Authorizing the Construction of a Capital Improvement.**

The Director may only authorize or require the Concessioner to construct capital improvements on Area lands in accordance with the terms and conditions of this CONTRACT and for the conduct by the Concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

## **Section 4. Requirements for Beginning to Construct a Capital Improvement.**

Before beginning to construct any capital improvement, the Concessioner must obtain written approval from the Director in accordance with the terms of this CONTRACT, including the terms and conditions of Exhibit A and Exhibit F. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this Exhibit. (The approval requirements of this and other sections of this CONTRACT also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this CONTRACT.)

## **Section 5. Requirements after Substantial Completion of a Capital Improvement.**

Upon substantial completion of the construction of a capital improvement in which the Concessioner is to obtain a leasehold surrender interest, the Concessioner must provide the Director a detailed construction report in accordance with the terms and conditions of this CONTRACT, including without limitation Exhibit A and Exhibit F. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the Concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this Exhibit. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

**Section 6. Determining Construction Cost for Purposes of Leasehold Surrender Interest Value.**

After receiving the detailed construction report (and certification, if requested), from the Concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this Exhibit A. The construction cost determined by the Director will be the construction cost for purposes of the Leasehold Surrender Interest Value in the related capital improvement unless the Concessioner requests arbitration of the construction cost under Section 7 of this Exhibit A. The Director may at any time amend a construction cost determination (subject to arbitration under Section 7 of this Exhibit A) if the Director determines that it was based on false, misleading or incomplete information.

**Section 7. Arbitrating the Construction Cost of a Capital Improvement.**

If the Concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under Section 6 of this Exhibit A. The arbitration procedures are described in Section 1 of this Exhibit A. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

**Section 8. Actions the Concessioner May or Must Take Regarding Leasehold Surrender Interest.**

The Concessioner:

- (a) May encumber a Leasehold Surrender Interest in accordance with the terms of this CONTRACT;
- (b) Where applicable, must transfer its Leasehold Surrender Interest in connection with any assignment, termination or expiration of this CONTRACT; and
- (c) May waive or relinquish a Leasehold Surrender Interest.

**Section 9. Extinguishment of a Leasehold Surrender Interest.**

A Leasehold Surrender Interest may not be extinguished by the expiration or termination of this CONTRACT and a Leasehold Surrender Interest may not be taken for public use except on payment of just compensation. Payment of Leasehold Surrender Interest Value pursuant to the terms of this CONTRACT will constitute the payment of just compensation for Leasehold Surrender Interest within the meaning of this CONTRACT and for all other purposes.

**Section 10. Leasehold Surrender Interest Under a New Concession Contract.**

If the Concessioner under this CONTRACT is awarded a new concession contract by the Director, and the new concession contract continues a Leasehold Surrender Interest in related capital improvements, then the Concessioner's Leasehold Surrender Interest Value (established as of the date of expiration or termination of this CONTRACT) in the related capital improvements will be continued as the initial value of the Concessioner's Leasehold Surrender Interest under the terms of the new concession contract.

**Section 11. Payment for Leasehold Surrender Interest if the Concessioner is Not Awarded a New Concession Contract.**

(a) If the Concessioner is not awarded a new concession contract after expiration or termination of this CONTRACT, or, the Concessioner, prior to such termination or expiration, ceases to utilize, under the terms of this CONTRACT, capital improvements in which the Concessioner has a Leasehold Surrender Interest, the Concessioner will be entitled to be paid its Leasehold Surrender Interest Value in the related capital improvements. The Leasehold Surrender Interest will not be transferred until payment of the Leasehold Surrender Interest Value. The date for payment of the Leasehold Surrender Interest Value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of this CONTRACT, or the date the Concessioner ceases to utilize related capital improvements under the terms of this CONTRACT. Depreciation of the related capital improvements will be established as of the date of expiration or termination of this CONTRACT, or, if applicable, the date the Concessioner ceases to utilize the capital improvements under the terms this CONTRACT.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the Leasehold Surrender Interest Value payment as of the date of expiration or termination of this CONTRACT, or, as of the date the Concessioner ceases to utilize related capital improvements under the terms of this CONTRACT, the payment when made will include interest on the amount that was due on the date of expiration or termination of this CONTRACT or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a Leasehold Surrender Interest Value will be made within one year after the expiration or termination of this CONTRACT or the cessation of use of related capital improvements under the terms of this CONTRACT.

**Section 12. Process for Determining Leasehold Surrender Interest Value.**

In the event that the Concessioner and the Director cannot reach agreement as to a Leasehold Surrender Interest Value where required by the terms of this CONTRACT, the Director will make a final determination of the Leasehold Surrender Interest Value unless binding arbitration as to the value is requested by the Concessioner. The arbitration procedures are described in Section 1. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this Exhibit A are final and not subject to further arbitration.

**Section 13. Payment of Leasehold Surrender Interest By a New Concessioner.**

A new concession contract awarded to a new concessioner will require the new concessioner to pay the Concessioner its Leasehold Surrender Interest Value in existing capital improvements as determined under Section 12.

**Section 14. Obtaining Additional Leasehold Surrender Interest By Undertaking a Major Rehabilitation or Adding to a Structure In Which The Concessioner Has a Leasehold Surrender Interest.**

If the Concessioner, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the Concessioner has a leasehold surrender interest, the Concessioner will increase its Leasehold Surrender Interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for Leasehold Surrender Interest Value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this CONTRACT.

**Section 15. Obtaining Additional Leasehold Surrender Interest By Replacing a Fixture in Which the Concessioner Has a Leasehold Surrender Interest.**

If the Concessioner replaces an existing fixture in which the Concessioner has a Leasehold Surrender Interest with a new fixture, the Concessioner will increase its Leasehold Surrender Interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

**Section 16. Obtaining a Leasehold Surrender Interest in Existing Real Property Improvements in Which No Leasehold Surrender Interest Exists.**

(a) If the main body of this CONTRACT requires the Concessioner to replace fixtures in real property improvements in which there is no Leasehold Surrender Interest (e.g., fixtures attached to an existing government facility assigned by the Director to the Concessioner), a Leasehold Surrender Interest will be obtained by the Concessioner in such replacement fixtures subject to the approval and determination of construction cost and other conditions contained in CONTRACT.

(b) If the main body of this CONTRACT requires the Concessioner to undertake a major rehabilitation of a structure in which there is no Leasehold Surrender Interest (e.g., a government-constructed facility assigned to the Concessioner), upon substantial completion of the major rehabilitation, the Concessioner will obtain a Leasehold Surrender Interest in the structure. The initial construction cost of this Leasehold Surrender Interest will be the construction cost of the major rehabilitation. Depreciation for purposes of Leasehold Surrender Interest Value will apply only to the rehabilitated components of the related structure.



**Section 17. No Leasehold Surrender Interest Results From Repair and Maintenance of Real Property Improvements.**

The Concessioner will not obtain initial or increased Leasehold Surrender Interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

**EXHIBIT B**

**OPERATING PLAN**  
**FOR**  
**AUTOMOBILE SERVICE STATIONS**  
**IN**  
**YELLOWSTONE NATIONAL PARK**

Superintendent: Mark D. [Signature] Date 3/21/06

Concessioner: William W. [Signature] Date \_\_\_\_\_

## TABLE OF CONTENTS

I.	Introduction	Page 3
II.	Management, Organization and Responsibilities:	Page 3
	National Park Service	Page 3
	Concessioner	Page 3
III.	Concessioner Operational Requirements	Page 3
	Concession Services	Page 3
	Staffing/Employment	Page 5
IV.	Concessioner Administrative Responsibilities	Page 6
	Seasonal Employee Orientation	Page 6
	Evaluations	Page 6
	Rates	Page 6
	Risk Management	Page 7
	Fire Protection	Page 7
	Hazardous Waste Program	Page 8
	Lost and Found	Page 8
	Marketing	Page 8
	Property Control	Page 8
	Employee Cooperative Recreation Program	Page 9
	Construction and Improvement Procedures	Page 9

**I. INTRODUCTION:**

This Operating Plan will serve as a supplement to the Concession Contract CCYELL004-06 (herein referred to as the "Contract") between, Yellowstone Park Service Stations, Inc. (hereinafter referred to as the "Concessioner") and the National Park Service (herein referred to as the NPS). The Plan describes specific operating responsibilities of the Concessioner and the NPS. The Plan will not alter the rights and liabilities of the parties to the Contract. In the event of any conflict between the terms of the Contract and this Operating Plan, the terms of the Contract will prevail. This Plan will remain in effect until superseded or amended.

**II. MANAGEMENT, ORGANIZATION AND RESPONSIBILITIES****A. National Park Service**

The Superintendent is responsible for park management. The Chief, Business Management (hereinafter referred to as "the Chief") is the liaison between the Concessioner and all other NPS divisions. The Chief has line authority from the Superintendent to make field decisions pertaining to the Concessioner's operations. All services, rates, operating hours, seasons, facility improvements, repair and maintenance, and new construction will be reviewed by the Business Management Office and approved by the Chief.

**B. Concessioner**

1. The Concessioner will employ a manager responsible for carrying out policies and directives of the NPS, as well as those of the Concessioner, in operating the authorized concession facilities and services in Yellowstone National Park.
2. The manager will have full decision-making authority relevant to the Concessioner's operations and will act as liaison for all administrative and operational matters.
3. The manager will employ a staff with the expertise to operate the services authorized under the concession contract.
4. The manager will furnish the Service with an initial list identifying key personnel and their job titles, with updates as changes occur.

**III. CONCESSIONER'S OPERATIONAL REQUIREMENTS****A. Concessioner Services****1. Service Stations**

- a) To the extent practicable, alternative fuels will be available throughout the park.
- b) Service stations will be operated in a manner consistent with industry standards.
- c) Self-service pumps will be available at each station.

**2. Towing Services**

- a) Towing or service trucks will be available at each major developed area as approved by the NPS.
- b) Tow operators from gateway communities will be called by the NPS Communications Center when the Concessioner cannot respond to a call within a reasonable time. A current "call-out" list will contain the names and phone numbers of tow operators authorized to provide this service.

### 3. Repair Services

The Concessioner will provide repair services at major developed areas as approved. Minor repairs will include, but not necessarily be limited to:

- a) Tire and wheel service
- b) Replacement of engine and drive train components
- c) Brake service
- d) Electrical system diagnosis
- e) Routine vehicle maintenance

### 4. Liquid Propane (LP Gas)

The Concessioner will provide LP gas to visitors at the following locations if equipment is available or as approved.

- a) Canyon Village
- b) Fishing Bridge
- c) Grant Village

### 5. Vending, Ice, Convenience Store Items and Minor Vehicle Retail Items

- a) The Concessioner is authorized to sell ice, vended products and convenience store items such as film, coffee, soft drinks and snacks, as approved by the NPS.
- b) The Concessioner is also authorized to sell retail items typically found in service stations such as maps, wiper blades, oil, anti-freeze, brake fluid, transmission fluid, washer fluids, etc.

### 6. Operating Seasons and Hours of Operation

- a) Operating seasons and hours will be approved each operating season by the NPS and will be adequate to ensure that visitors are able to obtain some services while park roads are open to the public. Personnel must be available for after-hours callout for emergency fuel.

- b) Operating dates may fluctuate with weather and road conditions; however, services will generally be provided as follows:

Summer Operations

<u>Location</u>	<u>Service</u>	<u>Operating Dates</u>
Mammoth Station	Fuel	May through early October
Tower Station	Fuel	June through early September
Canyon Station	Fuel/Towing	May through early November
Canyon Station	Repairs/LP Gas	Late May through early September
Fishing Bridge Station	Fuel	Early May through mid-September
Fishing Bridge Station	LP Gas	Early May through September
Fishing Bridge Station	Repairs/Towing	Late May through early September
Grant Village Station	Fuel/LP Gas	Mid-May through September
Grant Village Station	Towing	Late May through late September
Grant Village Station	Repairs	Late May through early September
Old Faithful Upper	Fuel	Late May through late August
Old Faithful Lower	Fuel/Towing	Mid-April through early November
Old Faithful Lower	Repairs	Late May through late August

**B. Staffing and Employment**

1. Adequate staffing will ensure a satisfactory level of service whenever facilities are in operation.
2. Full-time work will be offered whenever possible. Prior to employment, employees will be informed if less than full-time employment may occur during slow periods.
3. The room and board account will not be a profit center. Every attempt will be made to ensure that room and board charges, if any, do not exceed earnings as a result of mandatory work reductions. Room and board charges will be approved annually by the NPS.
4. The Concessioner's employee housing will be adequately furnished and maintained in a satisfactory manner.
5. Employees will wear a uniform or name tag identifying the employee and the Concessioner.
6. The Concessioner will not employ spouses or minor children of NPS employees without the prior written approval of the Chief.
7. While in effect, the Concessioner will cooperate in supporting the Seasonal Employee Health Care Program through mandatory payroll deductions for its seasonal employees.

**IV. CONCESSIONER ADMINISTRATIVE REQUIREMENT**

**A. Seasonal Employee Orientation**

The Concessioner will cooperate with the NPS in providing park orientation sessions for its seasonal employees. Programs will include information on NPS regulations, policies and park resources, as well as the Concessioner's expectations, park standards and safety.

**B. Evaluations**

NPS and United States Public Health Service inspections of the Concessioner's facilities and services will be conducted in a professional manner and will conform to current NPS guidelines. Results of evaluations and inspections will be forwarded to the Concessioner in a timely manner.

1. All services and facilities will be inspected to:
  - a) Identify public health and safety deficiencies
  - b) Identify maintenance and operating deficiencies
  - c) Ensure that services are satisfactory
  - d) Ensure satisfactory employee working and living conditions
2. The Concessioner will cooperate in:
  - a) Scheduling inspections
  - b) Accompanying NPS staff as requested
  - c) Responding to correction dates
  - d) Establishing abatement plans with the NPS to correct deficiencies

**C. Rates**

Rates will be submitted to the Chief for annual approval, including rates for employee room and board. NPS guidelines require the NPS to approve or disapprove rates based on current studies of similar facilities and services provided out of the park.

1. Sufficient information will be provided to enable the NPS to assess rates.
2. Simplified rate approval processes will be used throughout the season to expedite the approval process to ensure fuel deliveries reflect current prices.
3. The Concessioner may assist with the selection of comparable businesses.

**D. Risk Management -Safety**

The Concessioner is responsible for providing a safe and healthful environment for its employees and visitors. The Concessioner will develop a Risk Management Program that will be approved by the NPS in accordance with the Occupational Safety and Health Act (OSHA) and NPS-50 Guidelines. The Program will include the following components and be reviewed annually by the NPS:

1. A written policy available to the staff
2. Designated safety and health official
3. Management and staff accountability
4. Sufficient funds and resources allocated to support the Program
5. Annual goals and objectives
6. An inspection schedule for all equipment, facilities and public use areas
7. Documentation of inspections
8. A Training Plan
9. Personnel trained to conduct inspections
10. Public and employee awareness program relevant to environmental hazards
11. Emergency procedures (spills, fire, etc.)
12. A documented plan for reporting and investigating employee and visitor injuries/accidents

**E. Fire Protection**

The Concessioner will ensure that the following systems are tested and serviced or replaced in accordance with the National Fire Protection Agency (NFPA) requirements:

1. Suppression systems
2. Fire hose boxes
3. Fire escapes
4. Exit signs and doors
5. Interior alarm pull boxes
6. Detection systems
7. Emergency lights

**F. Hazardous Waste Program**

The Concessioner will develop and submit a Hazardous Materials Plan for approval of the NPS within 60 days of execution of this contract, that will be incorporated into the Risk Management Plan.

The Concessioner will promptly and properly clean, mitigate, and remediate all unauthorized discharges of hazardous materials or non-hazardous chemical and biological products released from fleet and public service vehicles and/or stationary sources within their land assignment. The Concessioner will also be responsible



for any hazardous material released from their vehicles outside their land assignment. Response shall be consistent with guidelines established within applicable Federal, State, and local regulations, and as outlined within the Concessioner's Hazardous Materials Plan. When a spill, leak, or other release occurs, the Concessioner shall notify the NPS Business Management Office and the Communication Center as soon as possible.

#### **G. Lost and Found Policy**

1. Items found will be turned over to the station manager and tagged. The tag will identify the item, date, location found, and name of finder. A lost and found form will be completed. Items will be assigned a number and reported to the NPS Visitor Services Office. The manager will secure the items to be picked up by the NPS on a weekly basis.
2. After proper identification, owners may claim property on location. No property will be released without the owner leaving their name, address and signing Form 10-166. This form will be forwarded to the NPS Visitor Services Office.
3. All found property will be held for a period of 60 days by the NPS. Property not claimed during this period may be claimed by the finder. Property may not be claimed by an individual other than the finder.
4. The NPS will be responsible for returning found articles to the owner.

#### **H. Marketing**

All promotional and printed material generated by the Concessioner will be submitted to the NPS for approval prior to distribution to the public. Out of park advertising, including the Internet, radio advertisements, billboards, magazines, etc., will also be approved by the NPS. All interpretive material and park information will be kept current and accurate.

#### **I. Property Control**

The Concessioner will manage the acquisition, disposition and inventory of new and assigned government-owned property. Actions relating to property must follow NPS Property Management Guidelines.

1. The Concessioner must provide acquisition information and periodic reports to the NPS.
2. The Concessioner will maintain a computer inventory of NPS assigned property.
3. The Concessioner will provide annual inventories of government property to the Business Management Office.

**J. Employee Cooperative Recreation Program**

The Concessioner will participate in the Yellowstone Cooperative Recreation Program. This program is supported by each of the park's concessioners and the NPS. The Program provides recreation for employees, including field trips, dances, sports activities, movies, video rentals, etc. The Program is available to all concessioner and NPS employees:

1. Each organization participating in the program will designate one representative to serve as a member of the Program Committee.
2. The Program is funded by contributions from the participating members. Actual Program costs, including equipment, are pro-rated based on the number of employees. NPS participation is computed by pro-rating the number of NPS employees participating in the program to establish an annual value for projects and services based on the availability of funds and maintenance priorities.
3. Program income will help offset program costs. The Program Director will recommend major equipment purchases to be approved by the Committee.
4. The Committee will review and approve an annual budget within the available allocations.
5. Xanterra will provide accounting functions for the program and receive 3.0% of the Program revenue for this service.
6. Xanterra provides recreation halls and other facilities throughout the park, as approved by the NPS. The NPS will make outdoor facilities available.
7. The Program is charged rent for recreation halls and other facilities throughout the park, as approved by the NPS. Rent is used to offset utilities and routine maintenance of the facilities.
8. All furniture, fixtures and equipment purchased by Program funds will remain the property of the Program. The Program Director is responsible for purchase, distribution, control and inventory of all program property. The Program Committee is responsible for replacement and disposal of property.

**K. Construction and Improvement Procedures****Policy**

1. The following outlines the required administrative procedures for all construction and improvement projects. Project expenditures will follow contract requirements. The Chief must approve all projects, funding authorizations and adjustments, in advance.

2. Allowable projects include planning, design, construction of new buildings and infrastructure, rehabilitation and modification of existing buildings and related infrastructure, demolition of old facilities and site restoration. Projects may include the cost of an independent, third party construction supervisor/inspector to represent the interest of the government.

3. Repair and Maintenance Reserve Funds are not to be used for:

- a) Routine housekeeping and operating expenses
- b) Maintenance of government property not assigned to the Concessioner
- c) Seasonal opening and closing costs.
- d) Government projects or activities not directly related to the Concessioner's authorized services

4. Contracts entered into by the Concessioner are private contracts and are issued to obtain the best value possible. The Concessioner will not enter into any arrangement or agreement whereby it receives money or other benefits from the contractor.

5. The Concessioner will ensure that a Builders Risk Form insurance policy is in effect during construction. This is an appropriate expenditure from the accounts.

#### Project Approval

1. The Concessioner will submit, for approval, by the 15<sup>th</sup> of November each year, an Annual Construction and Repair and Maintenance Management Plan (CMP). The CMP will include a schedule for project development and implementation.

2. A Project Statement will be completed for each project submitted for approval. The scope, justification and cost estimate will provide sufficient information to review and approve or disapprove projects based on, but not limited to, the following:

- a) Concession contract and amendments
- b) Need, based on resource impacts or human risk factors
- c) Visitor services
- d) Compliance with NPS planning documents
- e) Other applicable factors

3. Once projects are approved by the NPS in writing, the Concessioner may proceed with the project. Various stages of the project may require further review and approval, i.e., contracts, design, specifications, compliance, etc.

### Project Tracking

1. Consistent with Exhibit F, Project Statements will provide a chronological audit trail of decision-making activity including compliance, meetings, inspections, resource issues, etc. NPS will use information provided by the Concessioner to guide and document the administrative record for a project from implementation through completion containing, but not limited to, the following:

- a) Justification and general scope of work
- b) Cost estimate
- c) Approval to proceed
- d) Asset management requirements
- e) Point of contact
- f) Compliance/consultation record
- g) Contract information/schedules
- h) Monthly expenditures
- i) Financial adjustments (change orders, adjustments, etc.)
- j) Annual completion summaries
- k) Final completion report

2. Support documents will be maintained in the Project File located in the Business Management Office Central Files and referenced on the Project Statement.

3. Projects that affect any cultural or historical resource must be processed within the compliance provisions of Section 106 of the National Historic Preservation Act and must comply with the Secretary of the Interior's Standards for Rehabilitation.

### Specifications, Design and Bidding

1. When there are unusual circumstances, clear advantages and adequate controls, exceptions to the following may be granted, in writing, by the NPS.

- a) Work will be accomplished through competitive bids wherever possible
- b) Sole-source contracts may be issued with prior NPS approval
- c) The Concessioner will advertise, solicit or secure estimates or bids for projects
- d) The Concessioner will receive and evaluate project bids
- e) The Concessioner may not bid as an independent contractor, or be employed by the contractor for projects.

2. The Concessioner will develop a project description sufficient to secure an architect, engineer, or construction contractor. Contracts will be reviewed and authorized by the NPS in writing.

3. Plans and specifications will be prepared by the Concessioner and reviewed and approved by the NPS, i.e., preliminary design, 50% draft, 100% completion, etc.

4. Sufficient time will be allowed for design review by appropriate NPS staff or by independent consultants. A minimum of 2 weeks for in-house review will be required. More complex projects may require additional time.

5. Each bidding or estimating package will include:

- a) Plans and specifications
- b) General provisions *and special provisions*
- c) A draft contract or agreement under which the work will be carried out

6. The Concessioner will recommend a contractor from the bidders, or other sources if a bid process was not used. Once the contractor is confirmed and the contract has received NPS concurrence, the Concessioner will be authorized to sign a contract and proceed with the project.

7. The contract will include provisions and applicable rates if the Concessioner is to provide food or lodging.

8. The Concessioner will submit a final budget estimate and time schedule for the project to the NPS.

9. Project progress reports enumerating project costs, invoices, certificates and other documentation and work accomplished, to date, will be submitted to NPS as requested.

10. Contract change orders require NPS approval in advance in writing. The Concessioner and the NPS will jointly inspect projects prior to issuing substantial completion.

11. The Concessioner will submit an annual project summary if the project carries over from year to year. Summaries will include the description and percentage of work completed, costs and other pertinent information.

12. The Concessioner will submit a final project completion report, which includes the total project costs, changes to systems, components, fixtures, equipment, warranties, service manuals, other similar documents, and as-constructed drawings of the project in the form specified.

13. Invoices, certificates, and other documentation will be available upon request.

## NONDISCRIMINATION

### Section I: Requirements relating to Employment and Service to the Public

#### A. Employment

During the performance of this CONTRACT the Concessioner agrees as follows:

- (1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action ensuring that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.
- (2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.
- (3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No., 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract generating gross receipts exceeding \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment setting forth the contractor's policies, practices and procedures in accordance with the affirmative action program requirement.
- (5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this CONTRACT, or with any of such rules, regulations, or orders, this CONTRACT may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No.

11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of the Labor, as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

#### **B. Construction, Repair and Similar Contracts**

The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, shall be applicable to this CONTRACT, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this CONTRACT, and for that purpose the term "CONTRACT" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

#### **C. Facilities**

(1) Definitions: As used herein:

- (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;
- (ii) Facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

- (i) Publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;
- (ii) Discriminating by segregation or other means against any person.

## **Section II. Accessibility**

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

### **A. Discrimination Prohibited**

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

- (1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit or service;
- (2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others;
- (3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefit of services that are as effective as those provided to others;
- (5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid benefit, or service to beneficiaries of the recipient's program;
- (6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.



**B. Existing Facilities**

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph

does not require a Concessioner to make each of its existing facilities, or every part of a facility, accessible to and usable by handicapped persons.

**EXHIBIT D****ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)****LAND ASSIGNED:**

Land is assigned in accordance with the boundaries shown on the Land Assignment Maps (not to scale)

**REAL PROPERTY IMPROVEMENTS ASSIGNED:**

The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

Building Number	Location	Description	Square Footage
	Gardiner	Office space in Xanterra's transportation building.	2,700
	Gardiner	Residence adjacent to Xanterra's transportation complex	690
	Mammoth	Service station – Construction date approx. 1940	670
	Mammoth	Dormitory – Construction date 1945	1,125
	Tower Junction	Service station – Construction date 1962	958
	Canyon Junction	Service station – Construction date 1956	2,475
	Canyon	Dormitory – Construction date 1968	4,197
	Old Faithful	Lower service station – Construction date approx. 1927	2,162
	Old Faithful	Upper service station – Construction date approx. 1929	1,652
	Old Faithful	Dormitory – Construction date approx. 1989	4,088
	Grant Village	Service station – Construction date 1971	4,706
	Grant Village	Three Modular Dormitory Units	720 ea.
	Fishing Bridge	Service station – Construction date approx. 1927	1,534
	Fishing Bridge	Repair shop – Construction date approx. 1928	2,970
	Fishing Bridge	Dormitory – Construction date approx. 1959	2,832

Following is a list of mobile homes assigned to the Concessioner

Location	Description	Square Footage
Gardiner	Embassy trailer – 1968 model	517
Gardiner	Geer trailer – 1959 model	440

**EXHIBIT E**  
**ASSIGNED GOVERNMENT PERSONAL PROPERTY**  
**CC-YELL-004-06**

Government-owned personal property is assigned to the Concessioner for the purposes of the CONTRACT, as follows:

ATTACHED

**National Park Service**  
**Yellowstone Park Service Stations**  
**ASSIGNED GOVERNMENT PERSONAL PROPERTY**  
**Detailed Fixed Asset Inventory by Location and Class**  
**As of 12/31/04**

Location	Class	Asset Description	Manufacturer	Model	S.N.
Canyon	Furniture and Fixtures	Furniture and fixtures c/o chairs, tables, desk, cabinet, carts, and minor support furnishings			
Canyon	Furniture and Fixtures	Dorm furniture and fixtures for 9-units c/o beds, tables, chairs, and dressers, and sofas, tables, chairs, refrigerator, washer, dryer, and television in the general areas			
	<b>Furniture and Fixtures Total</b>				
Canyon	Machinery and Equipment	Machinery & equipment c/o group of minor hand tools, battery chargers, parts washer, floor grinder, welders, and general shop support equipment			
Canyon	Machinery and Equipment	Tire changer	FMC	Dual Power/MAG	
Canyon	Machinery and Equipment	Tire balancer	FMC	5800SC	
	<b>Machinery and Equipment Total</b>				
Canyon	Office Equipment	Office equipment c/o fax machine, cash register and charge card machine			
	<b>Office Equipment Total</b>				
Canyon	Vehicles	Truck, 3/4 ton flatbed, 1978	GMC		TCL238J508982
Canyon	Vehicles	Wrecker, 1-ton, 1986	GMC		1GDGJC33W0GS524353
Canyon	Vehicles	Wrecker, diesel, 2000	Ford	F650	3FDNX65H9YMA02790
	<b>Vehicles Total</b>				
<b>Canyon Total</b>					
Fishing Bridge	Furniture and Fixtures	Furniture and fixtures c/o chairs, table, work bench, cabinet, storage racks, and minor support furnishings			
Fishing Bridge	Furniture and Fixtures	Dorm furniture and fixtures for 9-units c/o beds, tables, chairs, and dressers, and sofas, tables, chairs, cabinet, refrigerator, washer, dryer, and television in the general areas			
Fishing Bridge	Furniture and Fixtures	Cabin furniture and fixtures for 5-units c/o beds, tables, chairs, and dressers			
Fishing Bridge	Furniture and Fixtures	Furniture and fixtures c/o chairs, table, desk, work bench, display racks, and minor support furnishings			
	<b>Furniture and Fixtures Total</b>				
Fishing Bridge	Machinery and Equipment	Machinery & equipment c/o group of minor hand tools, battery charger and tester, hydraulic press, welders, trans stand and general shop support equipment			
Fishing Bridge	Machinery and Equipment	Tire balancer	FMC	5800SC	
Fishing Bridge	Machinery and Equipment	Tire changer	FMC	Dual Power/MAG	
	<b>Machinery and Equipment Total</b>				
Fishing Bridge	Office Equipment	Office equipment c/o cash register, charge card machine and imprinter			
Fishing Bridge	Office Equipment	Office equipment c/o fax machine and charge card machine			
	<b>Office Equipment Total</b>				
Fishing Bridge	Vehicles	Van, 3/4 ton, 4x4, 1978	GMC	Suburban	TKL268F518044
Fishing Bridge	Vehicles	Truck, 1-ton flatbed, w/wheel lift, 1987	GMC		1GDHR33N7HCS25876
Fishing Bridge	Vehicles	Wrecker, 2-1/2 ton, 1993	GMC	Sera 3500	1GDJ6H1P2PJ517717
	<b>Vehicles Total</b>				
<b>Fishing Bridge Total</b>					

**National Park Service**  
**Yellowstone Park Service Stations**  
**ASSIGNED GOVERNMENT PERSONAL PROPERTY**  
**Detailed Fixed Asset Inventory by Location and Class**  
**As of 12/31/04**

Location	Class	Asset Description	Manufacturer	Model	S.N.
Gardiner	Furniture and Fixtures	Office furniture and fixtures c/o chairs, sofas, tables, desks, bookcases, cabinets, files, refrigerator, and minor office support furnishings			
Gardiner	Furniture and Fixtures	Warehouse furniture and fixtures c/o chairs, tables, cabinets, storage racks, and minor warehouse support furnishings			
	<b>Furniture and Fixtures Total</b>				
Gardiner	Machinery and Equipment	Group of minor hand tools and general warehouse support equipment			
	<b>Machinery and Equipment Total</b>				
Gardiner	Office Equipment	Office equipment c/o personal computers, printers, copy machine, fax machine, charge card machine, postage equipment, cb radio system, and phone system			
	<b>Office Equipment Total</b>				
Gardiner	Vehicles	Truck, 4x4 pick-up, 1993	Ford	Ranger	1FTCR15X1PPA92378
Gardiner	Vehicles	Van, suburban, 1995	GMC	2500	1GKG26K5SJ700806
Gardiner	Vehicles	Truck, tool, 1994	Ford	F350	2FDKF3804RCA55661
Gardiner	Vehicles	Truck, 1-ton stake, 1994	GMC		1GDSC34N1RES52962
Gardiner	Vehicles	Truck, pick-up, 2001	GMC	2500	1GTGK29U61Z126693
	<b>Vehicles Total</b>				
<b>Gardiner Total</b>					
Grant Village	Furniture and Fixtures	Dorm furniture and fixtures for 5-units c/o beds, tables, chairs, and dressers, and washers and dryers in the general areas			
Grant Village	Furniture and Fixtures	Dorm furniture and fixtures for 4-units c/o beds, tables, chairs, and dressers			
Grant Village	Furniture and Fixtures	Dorm furniture and fixtures for 1-unit c/o sofas, tables, chairs, dresser, and refrigerator			
Grant Village	Furniture and Fixtures	Furniture and fixtures c/o work benches, cabinets, and minor support furnishings			
Grant Village	Furniture and Fixtures	Furniture and fixtures c/o chairs, tables, desks, cabinets, and minor support furnishings			
	<b>Furniture and Fixtures Total</b>				
Grant Village	Machinery and Equipment	Tire balancer	FMC	5800SC	1813
Grant Village	Machinery and Equipment	Machinery & equipment c/o group of minor hand tools and general shop support equipment			
Grant Village	Machinery and Equipment	Tire changer	FMC	Dual Power/MAG	13720
	<b>Machinery and Equipment Total</b>				
Grant Village	Office Equipment	Office equipment c/o cash register, charge card machine and imprinter			
Grant Village	Office Equipment	Office equipment c/o cash register, charge card machine and fax machine			
	<b>Office Equipment Total</b>				
Grant Village	Vehicles	Truck, 1/2 ton pick-up, 1980	Chevy		CCG14AB116006
Grant Village	Vehicles	Wrecker, 2-1/2 ton, 2000	Ford	F650	3FDNX65HOYMA41591
	<b>Vehicles Total</b>				
<b>Grant Village Total</b>					
Mammoth Hot Springs	Furniture and Fixtures	Furniture and fixtures c/o chairs, table, desk, cabinet, and minor support furnishings			

**National Park Service**  
**Yellowstone Park Service Stations**  
**ASSIGNED GOVERNMENT PERSONAL PROPERTY**  
**Detailed Fixed Asset Inventory by Location and Class**  
**As of 12/31/04**

Location	Class	Asset Description	Manufacturer	Model	S.N.
Mammoth Hot Springs	Furniture and Fixtures	Dorm furniture and fixtures for 2-units c/o beds, and a sofa in the general areas			
	<b>Furniture and Fixtures Total</b>				
Mammoth Hot Springs	Machinery and Equipment	Machinery & equipment c/o group of minor hand tools, battery charger and general shop support equipment			
	<b>Machinery and Equipment Total</b>				
Mammoth Hot Springs	Office Equipment	Office equipment c/o fax machine and cash register			
	<b>Office Equipment Total</b>				
Mammoth Hot Springs	Vehicles	Truck, 1/2 ton pick-up, 1971	GMC	CE104J116507	
	<b>Vehicles Total</b>				
<b>Mammoth Hot Springs Total</b>					
Old Faithful Inn	Furniture and Fixtures	Furniture and fixtures c/o chairs, stools, table, work benches, cabinet, display racks, and minor support furnishings			
Old Faithful Inn	Furniture and Fixtures	Furniture and fixtures c/o chairs, work benches, desk, cabinet, and minor support furnishings			
Old Faithful Inn	Furniture and Fixtures	Dorm furniture and fixtures for 13-units c/o beds, tables, chairs, and dressers, and tables, chairs, sofas, refrigerator, washers and dryers in the general areas			
	<b>Furniture and Fixtures Total</b>				
Old Faithful Inn	Machinery and Equipment	Tire balancer	FMC	5800SC	451
Old Faithful Inn	Machinery and Equipment	Tire balancer	FMC	5800SC	
Old Faithful Inn	Machinery and Equipment	Machinery & equipment c/o group of minor hand tools, battery charger, and general shop support equipment			
Old Faithful Inn	Machinery and Equipment	Machinery & equipment c/o group of minor hand tools, and general shop support equipment			
Old Faithful Inn	Machinery and Equipment	Tire changer	FMC	Dual Power/MAG	1868
Old Faithful Inn	Machinery and Equipment	Tire changer	FMC	Dual Power/MAG	
	<b>Machinery and Equipment Total</b>				
Old Faithful Inn	Office Equipment	Office equipment c/o cash register, charge card machine and fax machine			
Old Faithful Inn	Office Equipment	Office equipment c/o cash register, charge card machine, imprinter and fax machine			
	<b>Office Equipment Total</b>				
Old Faithful Inn	Vehicles	Truck, pick-up, 1993	Mazda		JM2UF3143P0360758
Old Faithful Inn	Vehicles	Wrecker, 2000	Ford	F550	1FDAW56F6YEC9328
	<b>Vehicles Total</b>				
<b>Old Faithful Inn Total</b>					
Tower	Furniture and Fixtures	Furniture and fixtures c/o chairs, tables, work benches, desk, cabinet, storage rack, and minor support furnishings			
	<b>Furniture and Fixtures Total</b>				
Tower	Machinery and Equipment	Machinery & equipment c/o group of minor hand tools, battery charger and general shop support equipment			
	<b>Machinery and Equipment Total</b>				
Tower	Office Equipment	Office equipment c/o fax machine and cash register			
	<b>Office Equipment Total</b>				

**National Park Service**  
**Yellowstone Park Service Stations**  
**ASSIGNED GOVERNMENT PERSONAL PROPERTY**  
**Detailed Fixed Asset Inventory by Location and Class**  
**As of 12/31/04**

Location	Class	Asset Description	Manufacturer	Model	S.N.
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Tower	Vehicles	Truck, jimmy 4x4, 1977	GMC	TKL187F522287	
	Vehicles Total				

Tower Total

Grand Total

Exhibit F: Concessioner Construction, Major Rehabilitation,  
and Repair and Maintenance Project Procedures

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**EXHIBIT F**

**CONCESSIONER CONSTRUCTION, MAJOR REHABILITATION, AND REPAIR AND  
MAINTENANCE PROJECT PROCEDURES**

**A. Introduction**

This Exhibit presents step-by-step procedures for the administration of Concessioner building projects (construction, major rehabilitation, and repair and maintenance projects) within the park Area.. Important terms are defined first. Project planning and design are presented second, followed by guidelines for project supervision. All projects undertaken by the Concessioner require a coordinated effort between the Concessioner and the Superintendent. This Exhibit applies to the building of new structures or facilities, major rehabilitations, and the repair and maintenance ("R&M projects") of existing Concession Facilities that change the nature, appearance or value of existing Concession Facilities. Rehabilitation projects that are not major rehabilitations as defined in the Contract are considered as R&M projects. Facility operations, custodial and preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures. Repair and maintenance is also not to be considered as a project subject to these procedures when the activity does not change the nature, appearance or value of existing Concession Facilities. All projects must be proposed, approved, and accomplished under these procedures. In the event of any inconsistency between this exhibit and the main body of this CONTRACT and Exhibit A, the main body of the CONTRACT and Exhibit A will prevail.

In accordance with the Contract, only certain new construction and major rehabilitation projects may qualify for leasehold surrender interest (LSI). Following these administrative procedures for both LSI and non-LSI projects will enable NPS to approve LSI, as well as to ensure that all requirements of law and NPS policy are undertaken with respect to any project.

In addition, these procedures will enable the appraisal of LSI to occur in an orderly way. The documentation collected and organized by the use of these guidelines will provide a record of decision or "paper trail" of project development and implementation that will assist the park and concessioner in future planning and facility appraisal.

All project activities shall be directed and managed as presented in the "Annual Construction and Repair and Maintenance Management Plan" (CMP). In addition to these activities, the CMP is also to present scheduled project development and implementation, as presented below under Item C, Project Planning and Design, paragraph 1. Individual projects included in the CMP will be authorized by NPS through an approved Project Statement (PS).

Projects may be required to be reviewed under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act of 1966, as amended. All construction shall comply with codes and building requirements adopted by NPS, including without limitation and where applicable, the most recent International Building Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, and NPS management policies.



Exhibit F: Concessioner Construction, Major Rehabilitation,  
and Repair and Maintenance Project Procedures

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The Concessioner is responsible for all aspects of project development and implementation. The role of the NPS is to provide direction, authorization and oversight. The Concessioner and the Park staff must work closely together to successfully complete construction projects in a manner that achieves the goals and objectives of the park Area and the NPS.

**B. Definition of Terms**

"Annual Construction and Repair and Maintenance Management Plan" (CMP): A written document presenting all construction, major rehabilitation and R&M projects to be undertaken by the Concessioner during the following calendar year after the final submittal date.

"Approved Project Documents": Project drawings and specifications approved by the Park Superintendent and used by the Concessioner to direct a contractor in the type, size and quality of projects.

"Change Order": A written agreement between the "Construction Supervisor" and the Contractor or Consultant that changes the contract documents or scope of project work as agreed upon contractually.

"Construction": The removal or assembly of a building, road, utility or any other facility part or material that changes the nature, appearance, or value of that facility.

"Construction Supervisor": A Concessioner employee designated to administer and coordinate day-to-day projects representing the interests of the Concessioner and NPS and assuring quality work is performed that meets the design and specifications of the project. This person must have the authority to direct the contractor in any way that may change the contractual agreement between the Concessioner and the contractor.

"Conventional Design-Bid-Build Methods": Construction developed and implemented under several separate agreements managed and coordinated directly by the Concessioner.

"Contact Person": A Concessioner employee designated as the person to contact with regard to a specific matter, concern, or issue.

"Facilitator": A Concessioner employee designated to have the role of providing structure and agendas for meetings with NPS and who records meeting discussions and outcomes.

"Guaranteed Maximum Price Design-Build Construction Methods": An industry recognized type of construction where project consultants and contractors form an agreement to work as one entity providing facility construction in response to a developed request for proposal issued by the Concessioner. (Reference: Design Build Institute of America).

"Licensed Contractor": An entity performing construction certified or licensed by the State to perform construction services within that State.

"Major Rehabilitation": (Defined in the CONTRACT).

"Project Coordinator": A Concession employee vested with the authority to direct consultants and contractors in the expenditure of construction and R&M funds.

Exhibit F: Concessioner Construction, Major Rehabilitation,  
and Repair and Maintenance Project Procedures

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“Project Statement” (PS): An agreement between NPS and the Concessioner approved by the Park Superintendent that authorizes the development and implementation of individual projects identified in a CMP.

“Registered Technical Professionals”: Architects, engineers, or any subject area expert either certified or licensed by the State to perform specialized services or certified by a widely recognized industry regulator held responsible for quality and standard application of technical subject matter.

“Substantially Complete”: (Defined in the CONTRACT).

“Total Project Cost”: The total of all actual project expenditures (invoiced and paid) for completion of a project.

“Total Project Price”: The total of all estimated project expenditures for completion of a project.

### C. Project Planning and Design

(1) Submit an Annual Construction and Repair and Maintenance Plan (CMP). Before approval to proceed with any project is granted by NPS, the Concessioner must submit a CMP for implementation the following year. Some projects may require several years of planning and design before construction. The purpose of the plan is to identify the need and tentative scope of projects a complete year in advance of actual work to allow adequate time to prepare for project commencement. The CMP should include any intended projects. Projects shown in the plan must include at least a project title; project concept description; a brief statement of justification; and anticipated NEPA and Section 106 planning and compliance established in collaboration with NPS staff.

(2) Notify NPS of Intent-to-Proceed. The Concessioner shall formally notify the Park Superintendent in writing of intent to proceed with any facility planning, design and/or projects. The project must be identified in the CMP the calendar year before to assist the NPS in sequencing and scheduling necessary support staff. The time of notification shall be sufficiently in advance of any Concessioner budget formulation to assure the requirements of the Park Superintendent are included in the project scope before the project is funded.

(3) Identify a Project Coordinator. The Concessioner project coordinator must be identified for each project. This person should have the authority to obligate project expenditures and hire and direct consultants and contractors, and concessioner support staff.

(4) Prepare a proposed Project Statement (PS). Arrange and facilitate a project planning conference with NPS staff and prepare a proposed PS to be submitted to the Park Superintendent for review. The conference should be performed on the proposed project site, if needed.

(a) Conference goal and product. The primary goal of the conference is to clearly identify the project concepts and scope at sufficient detail to carry the project through to completion without significant deviation from an approved PS. The product of the conference should be an approved PS prepared by the Concessioner resulting from collaboration between the Concessioner and the Park Superintendent.

(b) Project Statement Content. The PS shall include the following as a minimum: Project description; justification; scope of work, including NEPA and Section 106 planning and compliance; estimated Total Project Price; proposed schedule; milestones of NPS design review and third party project inspection and

Exhibit F: Concessioner Construction, Major Rehabilitation,  
and Repair and Maintenance Project Procedures

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certification. The elements of the PS will function as check points of accountability and will vary in frequency and scope, contingent upon the nature, complexity and scope of the proposed project.

(c) Leasehold Surrender Interest. If the Concessioner seeks leasehold surrender interest as a result of a construction project, the Concessioner must request and receive the written approval of the proposed construction project by the Park Superintendent in accordance with the terms of this leasehold surrender interest concession contract. An estimate of the amount of leasehold surrender interest shall be identified in advance if the Concessioner requests leasehold surrender interest. The estimated leasehold surrender interest costs shall be separately identified as part of the Total Project Price and substantiated, if requested, with written and competitively acquired price proposals or construction contracts. Not all projects qualify for LSI. LSI is only granted under the terms of this CONTRACT, including, without limitation, its Exhibit A.

(d) Methods of Establishing the Expected Value of Leasehold Surrender Interest. A number of methods are available to estimate the Concessioner's leasehold surrender interest as long as eligible direct and indirect costs are specified. The methods of identifying the expected value of leasehold surrender interest include guaranteed maximum price design-build construction methods, conventional design-bid-build methods, and construction price estimates professionally prepared by subject area experts.

(e) Professional Services and Construction. The Concessioner must assure the park in its project statement that for any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work unless otherwise approved in writing by the Superintendent. The Concessioner shall provide for registered technical professionals to perform project inspection and/or facility certification, or any other service needed for project implementation at the request of the Park Superintendent.

(f) NPS Operations. Any aspect of the proposed project where the scope of work interfaces with NPS operations such as utility service connections or road maintenance operations must be clearly identified in the PS.

(5) Submit Project Statement for NPS Review. The proposed PS shall be submitted in written correspondence from the Concessioner to the Park Superintendent requesting review. A PS signed by the Park Superintendent constitutes official authority for the Concessioner to continue further project development to the level specified in written correspondence from the Superintendent. The Concessioner may obtain authority to complete a project when sufficient planning and design has been completed to meet the interests of the park. Projects that do not have the level of required planning are likely to receive only conceptual approval with authorization to proceed with further planning and/or design as required to assure park objectives are met.

(a) Project Statements Containing Claims for Leasehold Surrender Interest. A PS must present an estimate of project expenditures to be claimed for LSI purposes. The eligibility of any expenditures for LSI will not be identified until all project planning is complete to the satisfaction of the Park Superintendent, including NEPA and Section 106 compliance, if required. An approved PS serves only as a guide for further project development to the level specified in the PS. The Park Superintendent shall only approve final LSI costs after project completion and written project close-out.

(b) Design Required for Leasehold Surrender Interest Eligibility and Value. The Park Superintendent may require an appropriate level of design to determine whether a project is eligible for LSI, and if so, its estimated cost. The level of project planning and design required may include completion of concept

Exhibit F: Concessioner Construction, Major Rehabilitation,  
and Repair and Maintenance Project Procedures

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design, schematic design, or preliminary engineering design, to clearly identify the elements eligible for LSI. Some projects may require the completion of construction drawings and specifications before the proposed LSI is documented to the satisfaction of the Park Superintendent. All improvements for which LSI is claimed must be defined in record "as-built" construction drawings and specifications when the Concessioner submits its request for LSI at Project Close-out.

(6) Establish a Project File. A file of all project documents shall be held by the Concessioner as a chronological audit trail of all project decision-making activity for each project from concept development to completion and NPS acceptance. Each project shall be identified with a unique project number assigned by the Park. All documents entered into the file should have the project identification number clearly displayed on it as part of document identity.

(a) Leasehold Surrender Interest Project File. The Project File will become an LSI project file when the Concessioner requests approval of LSI. It shall be established and maintained by the Concessioner and shall include all of the documents identified in section 6(C) of this Exhibit. This file shall be submitted at the time of Project Close-out to the Park Superintendent as the basis for the leasehold surrender interest request. As part of this file, the Concessioner must maintain auditable records of all expenditures attributable to each project and have them available for review if requested by NPS personnel. Invoices shall contain sufficient information to identify the tasks completed or products delivered as agreed upon in contracts presenting a full scope of work. The file shall clearly provide a "paper trail" between expenditures eligible for LSI purposes and the payment of those expenses.

(b) Typical Project File. The organization of a typical project file is presented in the following sections:

Section A. Project Statement. The approved PS, scope of work, and a copy of the notice-to-proceed letter, authorizing planning and design, sent to the Concessioner by the Park Superintendent should be filed in this section.

Section B. Planning. This section should contain documents pertaining to any project planning. Typical documents include those produced for NEPA and Section 106 compliance. Also contained in this section should be any concept design, preliminary design, or schematic design correspondence and documents. When the Park Superintendent grants approval for any of the above stages of project development, correspondence from the Park Superintendent should be filed in this section.

Section C. Assessment. This section should contain a record of any assessment performed during project implementation. Soil, vegetation, floodplain, structural, electrical assessments, for example, should be filed in this section. Any other existing site or facility investigative reports, and all quality assurance documents such as third party project inspection, testing and certification should also be filed in this section.

Section D. Design. This section should contain a record of documents produced and decisions made during the design phase of a project. The design phase typically occurs when project activity has shifted from conceptual discussion to organizing detailed direction provided to a contractor for construction. Correspondence from the Park Superintendent providing design approval should be in this section.

Section E. Project Work. This section should contain a record of decisions made during project work. The letter from the Park Superintendent granting notice-to-proceed with the project should be in this section. All contractor proposals, change-orders, design modification documents, daily construction activity records, weekly meeting minutes, etc. should be in this section. Documentation for larger projects should

Exhibit F: Concessioner Construction, Major Rehabilitation,  
and Repair and Maintenance Project Procedures

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be organized according to subcontractor activity or standard specification enumeration. The final document filed in this section should be the NPS correspondence sent to the Concessioner providing project acceptance and close-out.

Section F. Financial. This is a very important section where a copy of all contracts and contract modifications should be filed. It is important to assure that all expenditures are accounted for. All expenditures must have sufficient supporting documentation cross-referenced with documents in other file sections, if necessary. Monthly financial detail reports shall be prepared and filed in this section with copies of all project budget documents. This section must contain all correspondence supporting LSI with appropriate cross reference to other sections for clarity of the LSI "paper trail." (For example, cross reference tabs). Also contained in this section shall be a copy of the project acceptance and close-out letter from the Park Superintendent that specifies the amount of leasehold surrender interest, if any, applicable to the project.

Section G. Photo Documentation. Complete documentation, including before-and-after photos, records of any special situations or conditions requiring changes, documentation of methods used, etc., should be kept to support requests for LSI and to assist future maintenance and/or appraisal efforts. Photographic documentation is also usually required for modifications to "listed" historic structures. To be most useful, photos should be filed with the documents they support.

(7) Submit Resource Compliance Documents for Review and Approval. During development of the project statement, responsibility for compliance work will be established. The Concessioner must request the participation of NPS staff early in project planning to assure uninterrupted project implementation. Development of compliance documentation must occur as soon as possible. Every effort shall be made to perform compliance document preparation tasks concurrently with project planning and design.

(a) Historic/cultural compliance. Historic and cultural compliance document approval is required for property listed in or eligible for inclusion in the National Register of Historic Places. Any undertaking affecting property listed shall be performed in accordance with The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings". The Concessioner must document proposed actions using the "XXX Form" (available from the National Park Service) before any work occurs for any project that may affect a historic structure, historic district, cultural landscape, archeological site or historic object or furnishing. Compliance will usually require the preparation of at least "assessment of effect" drawings and specifications to the level of final documents if required. Compliance shall carry through to submission of the "Construction or R&M Completion Report" for many projects where significant changes are made to the historic structure and/or landscape. Therefore, compliance document approval usually will not occur until after submission of project documents. In-park historic compliance review and approval will require at least several weeks from date of submittal. Where submittal is made to the State Historic Preservation Officer or the Advisory Council on Historic Preservation, additional time will be required before approval may be given. This may be performed concurrently with approval of project documents.

(b) Ground disturbance. Where ground disturbance will take place submittal of drawings that show area and depth of proposed ground disturbance will be required. Submittal of this document early in project planning is recommended. All project documents that include soil disturbance shall have the following specification included within them:

"Petroglyphs, artifacts, burial grounds or remains, structural features, ceremonial, domestic, and archeological objects of any nature, historic or prehistoric, found within the project area are the property

Exhibit F: Concessioner Construction, Major Rehabilitation,  
and Repair and Maintenance Project Procedures

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of and will be removed only by the Government. Should Contractor's operations uncover or his/her employees find any archeological remains, Contractor shall suspend operations at the site of discovery; notify the Government immediately of the findings; and continue operations in other areas. Included with the notification shall be a brief statement of the location and details of the findings. Should the temporary suspension of work at the site result in delays, or the discovery site require archeological studies resulting in delays of additional work for Contractor, he/she will be compensated by an equitable adjustment under the General Provisions of the contract."

(c) Archeological Monitoring. Monitoring project activity is a requirement of cultural compliance when significant ground disturbance occurs during project work. Any cultural resource monitoring required shall be performed under the direction of the NPS. The NPS shall be notified sufficiently in advance of the need for a monitor and will assist the Concessioner in making arrangements for the services of an archeological monitor at the expense of the Concessioner, if the NPS is unable to provide the expertise.

(d) National Environmental Policy Act (NEPA) compliance. NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by the NPS early during project planning. The actual review period length may vary widely depending on the nature, scope, and complexity of the project elements that relate to resource compliance. Projects that have an insignificant effect on park resources usually require a "categorical exclusion" determination--a process that may require sufficient extended lead-time from submittal of review documents. Projects having a significant effect on park resources or that are not part of other NEPA compliance documentation may also require a longer period of implementation.

(8) Submit Project Documents (PDs) for Review and Approval. The Concessioner shall submit PDs for review and approval to establish project activity for approval by the Superintendent. Approved PDs establish the full scope of the project and the quality of work to be performed by the Concessioner. The scope of the documents required will be identified in the PS. The scope and detail of the documents will vary depending on the nature and complexity of the project. "Manufacturer's cut-sheets" may be all that is required for some R&M projects, and for others, complete detailed drawings and specifications may be required. The Concessioner is responsible for the technical accuracy and completeness of PDs and shall provide the technical review as needed to assure compliance with all applicable federal, state and local statutes, codes, regulations and appropriate industry standards. Any exception to this will be by written authorization from the Superintendent.

(9) Submit a Project Estimate and Schedule. An estimate of the Total Project Price and completion schedule shall be submitted to the Superintendent before work begins. This is a revision of the Total Project Price and completion schedule estimated in the Project Statement. It is based on the best information available identified during project planning and design.

#### **D. Project Management Procedures**

(1) Identify a Project Supervisor. A Project Supervisor shall be identified and vested with the authority to direct the contractor on behalf of the Concessioner. The NPS will direct its communication concerning the nature and progress of day-to-day project activity to this person. This person should have full responsibility for assuring that all construction complies with the approved Project Documents and specified code compliance. The NPS should not take any responsibility for projects until Project Close-out and Acceptance when the NPS receives certification of completed work performed in compliance with Project Documents and all specified codes.

Exhibit F: Concessioner Construction, Major Rehabilitation,  
and Repair and Maintenance Project Procedures

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(2) Submit a Total Project Price for Review.

(a) All projects completed under the terms of this Contract where LSI is requested shall include submittal of a Total Project Price in writing to the Superintendent for review.

(b) Where no LSI is requested, the Total Project Price is provided as an informational item. Formal approval by the Superintendent is not required.

(3) Notice-to-Proceed with a Project. A "Notice-to-Proceed" with a project will be issued when all submittals requested by the Park Superintendent have been reviewed and approved. The Notice-to-Proceed must be received by the Concessioner in writing before any project work occurs.

(4) Hold a Pre-Project Conference with the Contractor. The Concessioner shall arrange and facilitate a pre-project conference as needed or as requested by the NPS with the Contractor. The purpose of the conference is to provide the NPS the opportunity to meet the Contractor and confirm that the Contractor has full understanding and knowledge of all work to be performed. In addition, the conference provides the opportunity to confirm established communication linkages between the Concessioner, the Contractor and the NPS. Any questions the Contractor may have regarding any matter of the project or anything about Area access, rules and regulations may also be discussed.

(5) Submit Project Activity Reports (as required). A record of project activity shall be provided by the Concessioner on all approved projects. The scope and frequency of performing this documentation shall be identified upon submittal of PDs for Park approval. The Concessioner is responsible for the accuracy and completeness of all design and completed projects.

(a) Content. Project activity reports shall summarize daily project activity recording important observations and decisions. It shall also identify project expenditures to date if required for leasehold surrender interest purposes. The reports shall identify any changes to the approved PDs either by change order or any other variance from approved PDs. The NPS shall be notified immediately, if a change is likely to occur in the Total Project Price where the project involves LSI. (See discussion below for review and approval of change orders and contract modifications.)

(b) Regulatory code compliance and project inspection (as required). Inspection reports specifically addressing regulatory code compliance and adherence to PDs will be required, at the request of the Superintendent, during certain stages of the work. Independent industry certified inspectors or registered professional subject area experts shall perform all inspections and project component certification. Inspection reports shall be prepared that include all findings and results of code compliance inspection. Section and paragraph of applicable codes shall be referenced when deficiencies are noted. Recommendations presenting remediation shall accompany line item deficiencies in the report. All inspection reports shall be included in the final project completion report submitted before project acceptance by the Superintendent.

(6) Submit Requests for Changes in Approved Project Documents. The Superintendent's approval will be required before any significant changes are made to the project scope during the completion of projects, as identified in the approved PDs. The Concessioner shall provide the NPS with written notification immediately upon identifying the need for a change in project scope that effects any of the items listed below. The written notification shall include a request for change in the approved PDs complete with justification and explanation of effect of change on all other aspects of project design and work. Requests

Exhibit F: Concessioner Construction, Major Rehabilitation,  
and Repair and Maintenance Project Procedures

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for any significant changes in the approved PDs shall be reported in project activity reports with attachment of any documentation requested. Changes in approved project scope during the work that will require review and approval of the Superintendent include the following:

- (a) Changes affecting natural, cultural and/or historic resources;
- (b) Changes in designated visual appearance;
- (c) Changes in the interface with NPS utility and/or road facility maintenance operations;
- (d) Changes in project scope and/or the estimated leasehold surrender interest, as required for facility improvement projects.
- (e) Proposed changes where natural or cultural/historic resources are involved may require a significant period of review depending on the complexity of the concern.

(7) Submittal of Change Orders for Review and Approval (for Leasehold Surrender Interest only). When one of the five factors listed above exists, the Concessioner shall submit, for the review and approval of the Park Superintendent, documentation justifying the proposed changes. The Concessioner shall also submit a revised Total Project Price for each proposed change, as needed, indicating the proposed change in estimated LSI. All change orders or any other means of directing the Contractor that may have the effect of increasing the Total Project Price will require the Park Superintendent's review and approval, if the project has LSI implications.

(8) NPS Project Inspection. The project will be inspected periodically by a representative of the Park Superintendent. The purpose of these inspections is not in lieu of or in any way a substitute for project inspection provided by the Concessioner. The responsibility to assure safe, accountable project activity and for providing the contractor with direction to fulfill the full scope of approved work is the responsibility of the Concessioner.

(9) Project Supervision Documents. Project drawings and specifications must be kept on the project site complete with any design or project modifications, in a well-organized form. The Construction Supervisor shall keep a current "red-line" copy of approved PDs updated daily showing any changes. In addition, a well-organized file of submittals required in the approved PDs and approved where required by professional Architects and/or Engineers must also be kept on the project site with the PDs for periodic inspection by NPS staff.

(10) Substantial Completion Inspection and Occupancy. Joint inspection by the NPS and the concessioner will occur upon notification that the project is substantially complete. A "punch list" of work items will be formulated and performed to "close-out" the project. The Superintendent, in writing will accept the project, when the "punch-list" items are completed. The Concessioner is not to occupy the facility until authorized in writing by the Park Superintendent.

(11) Requesting Approval of Leasehold Surrender Interest. Upon substantial completion of a project, as determined by the Park Superintendent, the Concessioner must provide the Superintendent a written schedule of requested LSI eligible costs incurred, which becomes the Concessioner's request for LSI approval. The project file, containing actual invoices and the administrative record of project implementation, must support these expenditures and shall be submitted to the Park Superintendent for review with the request. If requested by the Park Superintendent, the Concessioner shall also provide



Exhibit F: Concessioner Construction, Major Rehabilitation,  
and Repair and Maintenance Project Procedures

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written certification from a certified public accountant regarding the LSI costs. The certification must comply with the requirements of Exhibit A of this Contract.

(12) Project Completion Report. Upon completion of any project, the Concessioner shall submit a Project Completion Report to the NPS. The completion report shall include the Total Project Cost; before-and-after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; and "as-constructed" drawings (see item section C(13) below). Projects where LSI is requested may require the submittal of any other similar documents deemed by the NPS necessary to establish complete project documentation. The level of documentation requested may also include adequate photo-documentation provided during construction to record significant unforeseen site and construction conditions resulting in changes to approved PDs and the approved Total Construction Price.

(13) "As-Constructed Drawings". The "as constructed" drawings included with the Project Completion Report for all projects shall be full-size archival quality prepared in accordance with NPS management policies and must be submitted before project acceptance by the National Park Service. At least two half-size sets of drawings shall also be provided. The drawings establishing LSI shall provide a full and complete record of all "as-constructed" facilities including reproduction of approved submittals and manufacturer's literature documenting quality of materials, equipment and fixtures in addition to a record set of project specifications approved for construction.

(14) Request Project Acceptance and Close-out by the Superintendent. The Concessioner shall request project acceptance by the Park Superintendent either at the time of submittal of the Project Completion Report or at any time thereafter. Project acceptance will be contingent upon fulfillment of all requested project completion work tasks and submittal of all project documentation in accordance with these guidelines and as requested by the NPS. Until receiving formal written project acceptance and close-out from the Park Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work. For LSI projects, the project close-out letter issued by the Superintendent will specify the granted amount of LSI value resulting from the project.

**EXHIBIT G**  
**LEASEHOLD SURRENDER INTEREST AS OF THE EFFECTIVE DATE OF THIS**  
**CONTRACT**

Pursuant to Section 9(c)(2), the Concessioner's Leasehold Surrender Interest in real property improvements as of the effective day of this Contract, if any, is as follows:

**Description**

**Value**

**None**

Exhibit H

**MAINTENANCE PLAN**  
**FOR**  
**AUTOMOBILE SERVICE STATIONS**  
**IN**  
**YELLOWSTONE NATIONAL PARK**

Superintendent: M. W. S. S. Date: 3/21/66

Concessioner: William H. M. S. Date: 3/27/66

**TABLE OF CONTENTS**

Introduction	Page 3
Assigned Areas	Page 3
Access to Concession Facilities	Page 3
General Responsibilities	Page 3
Concessioner Responsibilities	Page 4
Buildings	Page 4
Radon	Page 4
Asbestos	Page 4
Lead Paint	Page 4
Codes	Page 4
Fireplaces/Chimneys	Page 4
Utility Systems	Page 4
Kitchen Equipment	Page 4
Safety	Page 5
Winterizing Buildings	Page 5
Damage to Government Buildings	Page 5
Grounds and Landscaping	Page 5
Access and Parking Areas	Page 6
Sidewalks, Walkways, Trails, Steps, Foot Bridges	Page 6
Infrastructure	Page 7
Solid Waste	Page 7
Water	Page 7
Sewer	Page 8
Electrical	Page 9
Phones	Page 9
Fuel Tanks	Page 9
Hazardous Materials	Page 10
Environmental	Page 10
Snow Removal	Page 11
Public Signs	Page 11
Pest Control	Page 12

## **I. INTRODUCTION**

This Maintenance Plan will serve as a supplement to the Concession Contract CCYELL-004-06 (herein referred to as the "Contract") between **YELLOWSTONE PARK SERVICE STATIONS, INC.**, (herein referred to as the "Concessioner") and the National Park Service (herein referred to as the NPS). The Plan describes specific maintenance responsibilities of the Concessioner and the NPS. The Plan will not alter the rights and liabilities of the parties to the Contract. In the event of any conflict between the terms of the Contract and this Plan, the terms of the Contract will prevail. This Plan will remain in effect until superseded or amended.

## **II. ASSIGNED AREAS**

Lands assigned under the Contract are identified on Land Assignment Maps. Government-owned buildings, assigned to the Concessioner, are identified on Exhibit D of the Contract. Boundaries not well defined by sidewalks or roads are to be a maximum of 50 feet from buildings, and 10 feet on either side of paths, walkways, and trails unless otherwise specified on the drawings. Any modification, construction or additions to assigned areas or buildings will result in corresponding changes on the land assignment maps.

## **III. ACCESS TO CONCESSION-OWNED AND OPERATED FACILITIES**

The Superintendent or her designated representative will have access to all Concessioner facilities in Yellowstone National Park to conduct inspections and other required business.

## **IV. GENERAL RESPONSIBILITIES**

- A. The NPS Concession Review Program provides general direction, expectations and standards on all aspects of concessioner operations. The standards for interior and exterior maintenance, as amended, supplemented, or revised are hereby incorporated by reference.
- B. The Concessioner is required, by the terms of the Contract, to maintain its facilities in a manner that is acceptable to the NPS. It is the purpose of the Maintenance Plan to help define the necessary standards and maintenance responsibilities and relationships between the Concessioner and the NPS.
- C. The Concessioner's personnel will be contacted prior to the NPS working in land or facilities assigned to the Concessioner.

## **V. CONCESSIONER RESPONSIBILITIES**

- A. Except as noted, the Concessioner is responsible for housekeeping, general maintenance, replacement and repairs, as follows:
1. Buildings - Any changes in the architecture, building interior or exterior, including color and material, must be approved, in advance, by the NPS. Preservation maintenance, general maintenance and repair on all structures must be consistent with NPS standards.
  2. Radon - The Concessioner will monitor radon levels in permanent quarters and work places and provide mitigation where federally accepted levels are exceeded in accordance with NPS-76.
  3. Asbestos - The Concessioner will develop a schedule for identifying and abating asbestos in accordance with OSHA 29 CFR 1926.58, Environmental Protection Agency (EPA), 40 CFR 61.M, 763.E and G, and NPS-76.
  4. Lead-Based Paint - The Concessioner will develop a program to identify and mitigate hazardous lead-based paint in accordance with the Lead Poisoning Prevention Act of 1971, Public Law 91-695, as amended in 1987 and 1988; and NPS Housing Design and Rehabilitation Guidelines (NPS-76). Lead levels must be detected before renovating any building constructed prior to 1977.
  5. Codes - The Concessioner will comply with all applicable federal, state, and local codes, including, but not limited to, the National Fire Protection Association's (NFPA) and applicable OSHA standards.
  6. Fireplaces/Chimneys - The concessioner will clean and inspect all chimneys, fireplaces, stoves, and exhaust ducts prior to each operating season.
  7. Utility Systems - The Concessioner will operate, repair and replace all interior and exterior utility systems within their land assignments as described in this plan or shown and described on land assignment maps.
  8. Kitchen Equipment - All equipment used in food service operations, including but not limited to, dishwashers, refrigerators, freezers and

serving tables, will comply with safety, public health, and sanitation codes.

9. Safety - The Concessioner will provide and maintain safety devices, fall protection, fire detection and suppression equipment, and such additional equipment necessary for the protection of the employees and the public, as well as Concessioner-owned and Government-assigned improvements by complying with all applicable codes.
10. Winterizing Buildings - The Concessioner will ensure that buildings are adequately winterized and secured while unoccupied. Shutters must be attractive and compatible with the building in areas visible to spring, fall and winter visitors. Roofs will be kept free of heavy snowloads.
11. Damage to Government-Owned Buildings - The Concessioner will be responsible for any damage caused to any Government-owned structure or utility due to negligence by vandalism of a Concessioner employee, Concessioner contractor or Concessioner supplier.
12. Grounds and Landscaping
  - a) All landscaping changes will be approved in advance by the NPS.
  - b) All chemicals used for fertilizers, pesticides, and herbicides require NPS approval prior to use.
  - c) The Concessioner will provide, maintain, repair and replace picnic tables within their assigned areas.
  - d) The Concessioner will work with the NPS to identify resource-related problems in assigned areas. The NPS will recommend and approve correction methods. The Concessioner is responsible for ensuring that necessary work is accomplished.
  - e) Any NPS work in Concessioner-assigned areas will be approved in advance by the Chief. All work will be coordinated through the Business Management Office (See Exhibit B, Operating Plan).
  - f) The Concessioner is responsible for litter-control in assigned areas.
  - g) The Concessioner is responsible for exotic weed management in assigned areas:

--The NPS will survey the Concessioner's land assignments to identify exotic weeds and provide the Concessioner with the

survey results. The Concessioner will work with the NPS to ensure early detection.

--The Concessioner will be responsible for manual removal of high-priority species. The NPS will chemically spray weeds that cannot be controlled manually and bill the Concessioner for associated costs.

--The NPS may restrict use of the land in areas containing aggressive, high-priority species. Vehicles and equipment stored in such areas will be pressure-washed prior to use.

--Vehicles used off-road by the Concessioner or its contractors will be pressure-washed, with particular attention to the undercarriage and any surfaces where soil containing seeds may exist. Such vehicles and equipment will be inspected by NPS staff at park entrances prior to entry. Vehicles and equipment found in the park that have not been inspected will be removed from service until inspected. Citation may be issued for non-compliance.

### 13. Access and Parking Areas

- a) The Concessioner is responsible for resurfacing, surface repair, patching and striping, debris and hazard removal in visitor, employee and administrative parking lots in areas that primarily serve the Concessioner and its customers.
- b) The NPS is responsible for resurfacing, surface repair, patching, striping, debris, hazard removal and street sweeping roads and parking areas where multiple use occurs. Multiple use areas are designated on the Land Assignment Maps.
- c) If requested, the NPS will street-sweep areas which primarily serve the Concessioner's operations and bill for services. The Concessioner will do all handwork.

### 14. Sidewalks, Walkways, Trails, Steps, Foot Bridges

- a) The Concessioner is responsible for maintaining and replacing sidewalks, established trails, and steps in its assigned areas including sweeping, surface repair, erosion control, and lighting.



(The boundary for sidewalks included in the Concessioner's land assignment is the roadside apron edge of the gutter.)

- b) The Concessioner will provide safety railings on steps and hazardous walkways, as required by codes.
- c) Established employee trails, which are used by more than one Concessioner and the NPS, will be designated as "multiple use" on the Land Assignment Maps and will be maintained by the NPS.
- d) The Concessioner is responsible for complying with the Americans with Disabilities Accessibility Act (ADAAG) in their assigned areas. All designs must meet NPS and UFAS standards. Ramps must not interfere with plowing and street-sweeping by extending into the roadways or parking lots.

## **VI. INFRASTRUCTURE**

- A) Water and sewer utilities, and solid waste services are provided by the NPS at established rates. Electricity and telephones are provided by private companies:
  - 1. Solid Waste
    - a) The NPS will provide and maintain garbage cans and dumpsters.
    - b) Any debris generated from the Concessioner's construction or demolition is the responsibility of the Concessioner. Loose debris, or debris causing litter problems, will be contained and covered and removed from the park as soon as possible. Park disposal sites, burn pits and boneyards are not available unless approved in advance by the NPS.
  - 2. Water
    - a) The Concessioner is responsible for all interior plumbing in Concession-owned and Government-assigned buildings.
    - b) The Concessioner's responsibility starts at, and includes, the isolation valves on the building side of the water main in assigned areas.
    - c) The NPS will maintain water meters on new and existing facilities. The Concessioner is responsible for purchasing and installing meters and back-flow prevention devices for new construction or new building assignments.

- d) If a water main is tapped, broken, or needs to be accessed, the local NPS maintenance supervisor will be notified. The Concessioner is responsible for exposing the main and restoring the area unless it is previously determined to be an NPS responsibility.
  - e) The Concessioner is responsible for road repairs if excavation through a road or paved area is needed to repair a line. The Concessioner will replace topsoil and revegetate any ground disturbance caused by repairs. The Concessioner will disinfect repaired lines in accordance with NPS procedures.
  - f) The Concessioner will provide the NPS with facility occupancy dates for activation or deactivation of systems.
  - g) The Concessioner is responsible for the following procedures prior to opening any facility that has been closed for the season:
    - 1) Water lines will be superchlorinated before initial use.
    - 2) In cases where superchlorination is not possible, lines will be thoroughly flushed with potable water. After lines are flushed, a steady stream of water must flow from spigots until demand creates a constant flow.
  - h) The NPS and USPHS will conduct annual water/sewer surveys in the Concessioner's facilities.
  - i) The NPS is responsible for replacing and maintaining fire hydrants.
3. Sewer
- a) The Concessioner is responsible for all interior plumbing and fixtures in Government-assigned buildings.
  - b) The Concessioner is responsible for collection systems serving only the Concessioner's facilities as follows:
    - 1) Cleaning, repair and replacement of systems up to and including the last manhole before a lift station or up to and including the last manhole before another user comes on line
    - 2) Exterior lines and laterals from assigned buildings to the mains

- 3) The NPS is responsible for day-to-day maintenance on lift stations.
  - c) The Concessioner is responsible for installing, repairing, maintaining and replacing grease-traps associated with their operations.
  - d) The Concessioner is responsible for reporting sewer spills and plugged sewer lines to the NPS.
4. Electrical
- a) The Concessioner will obtain electrical service from the local provider.
  - b) All interior wiring and electrical supply lines from exterior transformers into Concessioner-owned and NPS-assigned buildings are Concessioner responsibilities.
  - c) The Concessioner will provide all utility line drawings to the NPS to reflect any changes including new installations, repair or relocation.
  - d) The Concessioner is responsible for obtaining new or additional power lines within assigned areas.
  - e) The Concessioner is responsible for electricity and fixtures in assigned parking lots that serve only their facilities.

5. Phones

The Concessioner is responsible for all on-premise equipment and inside wiring. The Concessioner will contract directly for commercial telephone service. Agreements will be in accordance with guidelines provided by the NPS.

B. Fuel Tanks

- 1. The Concessioner is responsible for all underground storage tanks (USTs) and above ground storage tanks (ASTs) within their assigned areas. ASTs will be tested and maintained in accordance with 40 CRF, Part 280 (Wyoming) and ARM 16.45.102A (Montana) and all other applicable laws. The Concessioner must notify the NPS and the appropriate State Department of Environmental Quality (DEQ) in the

event of any leaks, spills, tank modifications, temporary closures or any status changes.

2. The NPS policy for USTs and ASTs will be followed for all existing tanks, upgrades and new installations.
4. The Concessioner is responsible for all propane (LP) tanks in assigned areas:
  - a) Tanks will be tested and maintained in accordance with NFPA 54 and 58, and with 29 CFR 1910.110.
  - b) Propane farms will be fenced and kept free of vegetation.
  - c) Plastic, untraceable LP gas lines will have trace-wire installed to facilitate advanced location and use. Warning tape will also be installed to warn future excavators of gas lines below.
  - d) All new propane tank installations will be approved by the NPS.

## **VII. HAZARDOUS MATERIALS**

All hazardous material (Haz-Mats) will be handled as follows:

1. The Concessioner will follow all RCRA, OSHA and 29 CFR, 1910 and 1926 regulations.
2. Haz-Mat requirements will be part of the Concessioner's Risk Management Program.
3. Spill kits, specified by the NPS, will be available at the Concessioner's Haz-Mat storage areas and in maintenance vehicles.
4. Spills will be reported immediately to the NPS Business Management Office.

## **VIII. ENVIRONMENTAL**

As required by Contract, the Concessioner will develop an Environmental Management Program to implement leadership and sustainability for facilities in Yellowstone National Park. The program will document how the Concessioner will ensure compliance with state and federal requirements. The program will include, but not be limited to, goals and initiatives for recycling, reducing solid waste, handling hazardous materials, and using products and technologies that

reduce resource impacts, conserve resources and improve efficiencies. To the extent possible, the Concessioner will use naturally derived cleaning products.

- A. The Concessioner will cooperate with the NPS in assuring that disposable products such as glass, aluminum, cardboard and paper are recycled or independently recycled, as approved, in advance, by the NPS. In addition:
  - 1. The NPS or a designee (Headwaters) will provide a sufficient number of marked recycling receptacles throughout the park for employees and visitors.
  - 2. The Concessioner will provide a sufficient number of marked recycling receptacles in its areas of operation.
  - 3. The NPS or designee will collect recyclables from NPS offices and residential areas.
  - 4. The Concessioner will collect recyclables from their assigned areas and haul to Xanterra's recycling center.
  - 5. Xanterra will haul materials to regional recycling centers.
  - 6. The Concessioner will store recyclables in appropriate secure storage containers to protect against odors that could attract animals.
  - 7. Revenues generated from the sale of recycled materials will be used to offset the cost of the program.

## **IX. SNOW REMOVAL**

- A. The Concessioner is responsible for removing snow from Concessioner-owned and Government-assigned buildings, roofs, entrances, porches and walkways. Ice buildup on walkways will be sanded or removed for safety.
- B. Any chemical used for removing ice must be approved in advance by the NPS.
- C. Winterkeeping Concession-assigned facilities is the Concessioner's responsibility.
- D. If requested, the NPS will plow roads and parking areas that are used predominately by the Concessioner's guests and employees and bill the Concessioner.

- E. The Concessioner is responsible for marking fire hydrants with snow stakes and for removing snow from around hydrants in assigned areas.

#### **X. PUBLIC SIGNS**

- A. All signs, flags and banners will be approved by the NPS prior to installation or replacement. Signs will meet the NPS sign standards.
- B. The Concessioner is responsible for maintaining and replacing all interior and exterior signs within their land assignments that relate to their operations and services.
- C. The NPS will provide roadside directional, traffic and regulatory signs.
- D. The NPS will provide signs for accessibility to be installed by the Concessioner.

#### **XI. PEST CONTROL**

The Concessioner will notify the Business Management Office of serious pest problems including rodents, swallows, bats and other wildlife or insects that may invade buildings. Business Management will coordinate with other NPS staff to provide an approved Integrated Pest Management (IPM) strategy for the Concessioner's implementation. The Concessioner will report results to the NPS.

## EXHIBIT I INSURANCE REQUIREMENTS

### I. INSURANCE REQUIREMENTS

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT:

### II. LIABILITY INSURANCE

The following Liability Coverages are to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

#### A. Commercial General Liability (including Malpractice Insurance)

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

General Aggregate	\$ 2,000,000 per occurrence
Bodily Injury and Property Damage Limit	\$ 1,000,000 per occurrence
Personal Injury & Advertising Injury Limit	\$ 1,000,000 per occurrence
General Aggregate	\$
Product/Completed Operations Liability	\$ 2,000,000 per occurrence
Fire Damage Legal Liability "per fire"	\$

2. The liability coverage may not contain the following exclusions/limitations:
  - a. Athletic or Sports Participants
  - b. Products/Completed Operations
  - c. Personal Injury or Advertising Injury exclusion or limitation
  - d. Contractual Liability limitation
  - e. Explosion, Collapse and Underground Property Damage exclusion
  - f. Total Pollution exclusion
3. For all lodging facilities and other indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.
4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

**B. Automobile Liability**

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. (Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, "Symbols 8 & 9," shall be maintained.)

Each Accident Limit     \$1,000,000

If owned vehicles are involved, Liability coverage should be applicable to "any auto" ("Symbol 21") otherwise, coverage applicable to "hired" and "non- owned" autos ("Symbols 28 & 29") should be maintained.

**C. Aircraft Liability (if applicable) N/A**

Coverage will be provided for bodily injury or property damage arising out of the use of any aircraft.

Each Person Limit

Each Accident Limit

**D. Excess Liability or Excess "Umbrella" Liability**

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

**E. Care, Custody and Control--Legal Liability (Describe Specific Coverage)**

Coverage will be provided for damage to property in the care, custody or control of the concessioner.

\$1,000,000

**F. Environmental Impairment Liability**

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

Each Occurrence or Each Claim Limit     \$1,000,000  
Aggregate Limit     \$2,000,000

**G. Special Provisions for Use of Aggregate Policies**

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

**H. Self-Insured Retentions**



Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed \$5,000.

### **I. Workers Compensation & Employers' Liability**

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

### **III. PROPERTY INSURANCE**

#### **A. Building(s) and/or Contents Coverage**

1. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit D of this CONTRACT.
2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.
5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
6. Coverage is to be provided on a blanket basis.
7. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.
8. Flood Coverage shall be maintained with a limit of not less than \$ N/A
9. Earthquake Coverage shall be maintained with a limit of not less than 90% of replacement cost
10. Ordinance or Law Coverage shall be maintained with a limit of not less than \$ N/A

#### **B. Boiler & Machinery Coverage**

1. Insurance shall apply to all pressure objects within Concession Facilities.
2. The policy shall provide for loss recovery on a Replacement Cost basis.
3. The amount of insurance should represent no less than 75% of the Replacement Cost value of the insured property.
4. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
5. Coverage is to be provided on a blanket basis.

6. If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.
7. Ordinance or Law Coverage shall be maintained with a limit of not less than \$ N/A

### **C. Builders Risk Coverage**

1. Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.
2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.
5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
6. Any occupancy restriction must be eliminated.
7. Any collapse exclusion must be eliminated.
8. Any exclusion for loss caused by faulty workmanship must be eliminated.
9. Flood Coverage shall be maintained with a limit of not less than \$
10. Earthquake Coverage shall be maintained with a limit of not less than \$

### **D. Business Interruption and/or Expense**

1. Business Interruption insurance, if maintained by the Concessioner, should cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property.

### **E. Deductibles**

Property Insurance coverages described above may be subject to deductibles as follows:

1. Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$25,000 (except Flood & Earthquake coverage may be subject to deductibles not exceeding \$50,000).
2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

**F. Required Clauses****1. Loss Payable Clause:**

A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies:

"In accordance with Concession Contract No. CCYELL-004-06 dated January 1, 2006, between the United States of America and Yellowstone Park Service Stations, Inc., payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America."

**IV. CONSTRUCTION PROJECT INSURANCE**

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Where appropriate, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project.

**V. INSURANCE COMPANY MINIMUM STANDARDS**

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverages must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
2. All insurers for all coverages must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
3. All insurers must be admitted (licensed) in the state in which the concessioner is domiciled.

**VI. CERTIFICATES OF INSURANCE**

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

## **VII. STATUTORY LIMITS**

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit shall be considered the minimum to be maintained.